

National Popular Election of the President
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How Nationwide Presidential Campaigns Would Be Run

January 7, 2017

The shortcomings of the current system of electing the President stem from *state* winner-take-all laws (i.e., laws in 48 states that award all of a state's electoral votes to the candidate receiving the most popular votes in each *separate* state). Because of winner-take-all, presidential candidates have no reason to solicit votes in states where the statewide outcome is a foregone conclusion. Instead, they only campaign in closely divided battleground states.

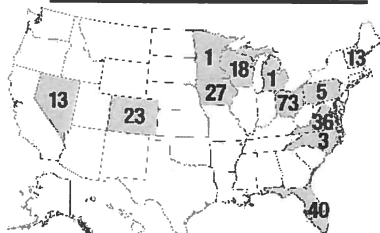
As Governor Scott Walker said while running for President in 2015:

"The nation as a whole is not going to elect the next president. Twelve states are."

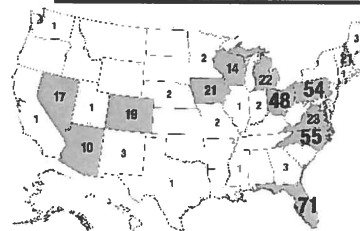
In 2012, 100% of the general-election campaign events (and virtually all campaign expenditures) were concentrated in the 12 states where the statewide outcome was between 45% and 51% Republican (that is, within $\pm 3\%$ of the eventual national outcome of 48%). Two-thirds of the events (176 of 253) were concentrated in just 4 states (Ohio, Florida, Virginia, and Iowa). Thirty-eight states were ignored because one candidate was safely ahead.

In 2016, 94% of the campaign events (375 of the 399) were in the 12 states where the outcome was between 43% and 51% Republican. Two-thirds of the events (273 of 399) were in just 6 states (Florida, North Carolina, Pennsylvania, Ohio, Virginia, and Michigan).

2012 Campaign Events



2016 Campaign Events



The maps above (and the charts at the end of this letter) also show that presidential candidates ignored 12 of the 13 least populous states, the 10 most rural states, and most Western states.

National Popular Vote Would Make Every Voter in Every State Matter

The National Popular Vote bill would guarantee the Presidency to the candidate who receives the most popular votes in all 50 states and the District of Columbia.

It would make *every* voter in *every* state equally important in *every* presidential election.

Some people have wondered whether candidates might concentrate on big cities or ignore rural areas in an election in which the winner is the candidate receiving the most popular votes.

If there were any such tendency, it would be evident from the way real-world presidential candidates campaign today *inside* battleground states. Every battleground state contains big cities and rural areas. Presidential candidates—advised by the country's most astute political strategists—necessarily allocate their candidate's limited time and money between different parts of battleground states. The facts are that, inside battleground states, candidates campaign everywhere—big cities, medium-sized cities, and rural areas. Far from concentrating on big cities or ignoring rural areas, they hew very closely to population in allocating campaign events.

Let's start by looking at the battleground state of Ohio—the state that received the biggest share (73 of 253) of the entire nation's campaign events in 2012.

- Ohio's 4 biggest metropolitan statistical areas (Columbus, Cleveland, Cincinnati, and Toledo.) are counties that have 54% of the state's population.
- Ohio's 7 medium-sized MSAs (Akron, Canton, Dayton, Lima, Mansfield, Springfield, and Youngstown) are counties that have 24% of the population.
- Ohio's 53 remaining counties (that is, the rural counties outside the 11 MSAs) have 22% of the state's population.

As can be seen from the table below, candidates campaigned everywhere—big cities, medium-sized cities, and rural areas. There is no evidence that they disproportionately favored big cities or ignored rural areas. They hewed very closely to population in allocating campaign events (indeed, with almost surgical precision).

Distribution of Ohio's 73 Campaign Events in 2012

	Percent of Ohio's population	Percent of campaign events
4 biggest MSAs	54%	52%
7 medium-sized MSAs	24%	23%
53 remaining counties (rural)	22%	25%

Not only is there no evidence that presidential candidates disproportionately ignored rural areas or concentrated on big cities, *it would have been preposterous for them to do so*. There is nothing special about a city vote compared to a rural vote in an election in which every vote is equal and in which the winner is the candidate receiving the most popular votes.

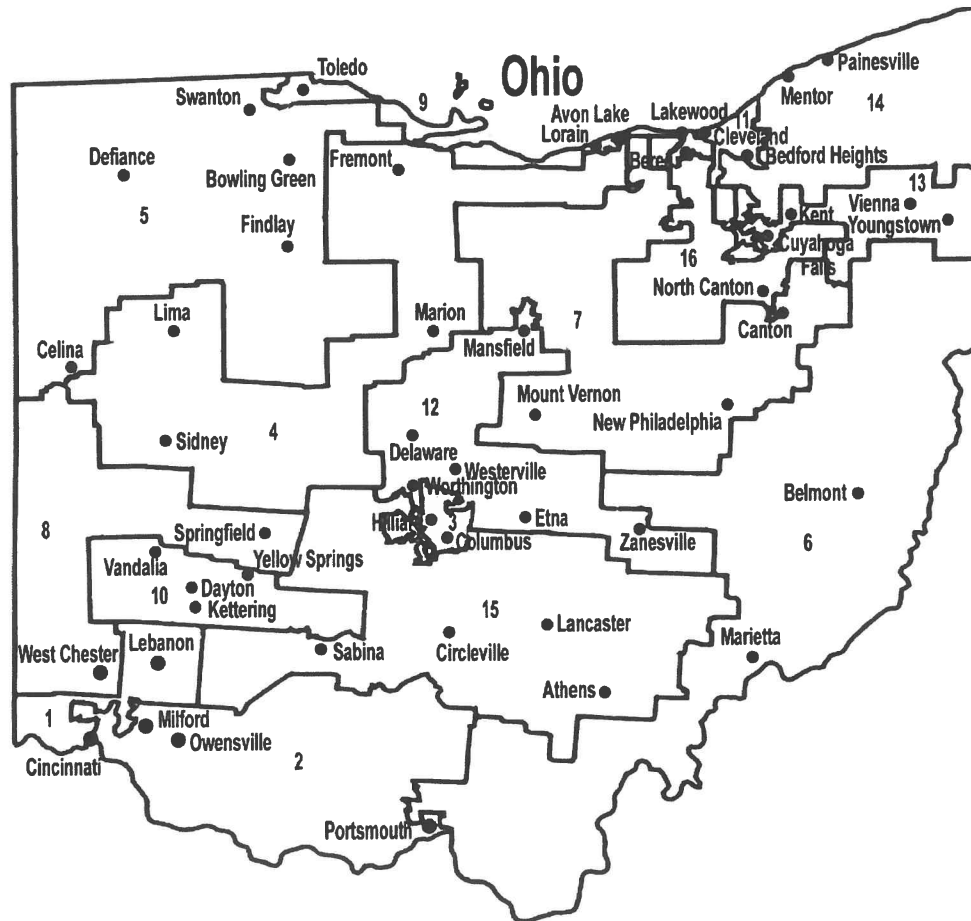
The conclusion that candidates campaign everywhere—big cities, medium-sized cities, and rural areas—is reinforced by looking at the *actual* places where candidates held campaign events.

Location of Presidential Campaign Events in Ohio in 2012

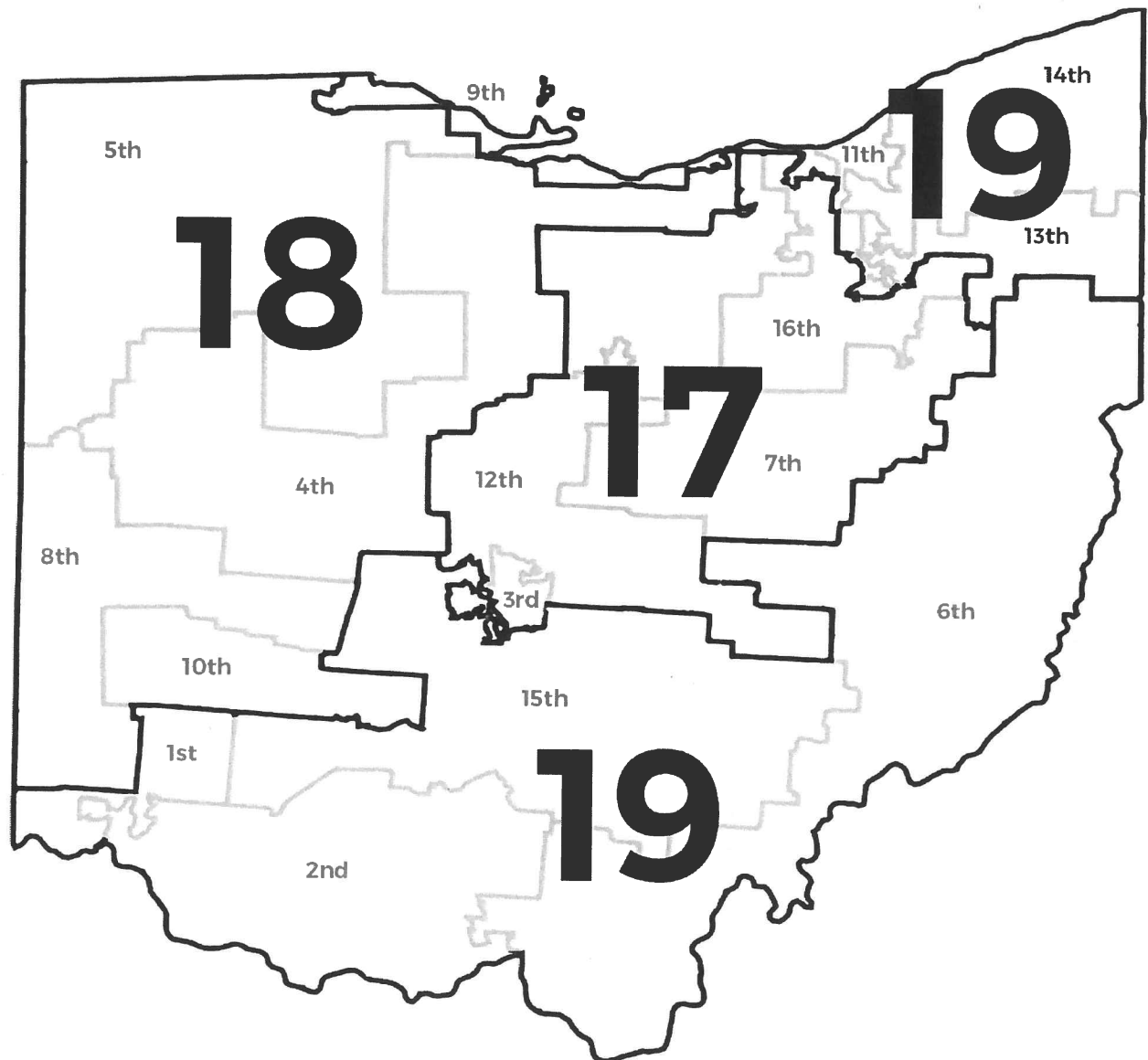
Place	Population	Candidate and date of campaign event	County	CD
Belmont	447	Ryan (10/20)	Belmont	6
Owensville	794	Ryan (9/12)	Clermont	2
Sabina	2,548	Ryan (10/27)	Clinton	15
Yellow Springs	3,526	Ryan (10/27)	Greene	10
Swanton	3,690	Ryan (10/8)	Fulton	5
Vienna	4,021	Ryan (11/5)	Trumbull	13
Milford	6,681	Biden (9/9)	Hamilton	2
Celina	10,395	Romney (10/28)	Mercer	5
Bedford Heights	10,751	Romney (9/26)	Cuyahoga	11
Circleville	13,453	Ryan (10/27)	Pickaway	15
Worthington	13,757	Romney (10/25)	Franklin	12
Marietta	14,027	Ryan (11/3)	Washington	6
Vandalia	15,204	Romney (9/25)	Montgomery	10
Etna	16,373	Romney (11/2)	Licking	12
Fremont	16,564	Biden (11/4)	Sandusky	4
Mount Vernon	16,812	Romney (10/10)	Knox	7
Defiance	16,838	Romney (10/25)	Defiance	5
New Philadelphia	17,292	Ryan (10/27)	Tuscarawas	7
North Canton	17,404	Romney (10/26)	Stark	16
Berea	18,980	Ryan (10/17)	Cuyahoga	9
Painesville	19,634	Romney (9/14)	Lake	14
Portsmouth	20,302	Biden (9/9), Romney (10/13)	Scioto	2
Lebanon	20,387	Romney (10/13)	Warren	1
Sidney	21,031	Romney (10/10)	Shelby	4
Avon Lake	22,816	Romney (10/29)	Lorain	9
Athens	23,755	Obama (10/17), Biden (9/8)	Athens	15
Zanesville	25,411	Biden (9/8), Ryan (10/27)	Muskingum	12
Kent	29,807	Obama (9/26)	Portage	13
Hilliard	30,564	Obama (11/2)	Scioto	15
Bowling Green	31,384	Obama (9/26)	Wood	5
Delaware	35,925	Romney (10/10)	Delaware	12
Marion	36,904	Biden (10/24), Romney (10/28)	Marion	4
Westerville	37,073	Romney (9/26)	Franklin	12
Lima	38,339	Obama (11/2), Ryan (9/24)	Allen	4
Lancaster	38,880	Biden (11/4), Romney (10/12)	Fairfield	15
Findlay	41,526	Romney (10/28)	Hancock	5
Mentor	47,023	Obama (11/3)	Lake	14
Mansfield	47,052	Romney (9/10), Ryan (11/4)	Richland	12
Cuyahoga Falls	49,245	Romney (10/9)	Summit	13
Lakewood	51,385	Biden (11/4)	Cuyahoga	9
Kettering	55,990	Romney (10/30)	Montgomery	10
Springfield	60,147	Obama (11/2)	Clark	8
West Chester	60,958	Romney (11/2)	Butler	8
Lorain	63,707	Biden (10/22)	Lorain	9
Youngstown	65,405	Biden (10/29), Ryan (10/12)	Mahoning	13
Canton	72,683	Biden (10/22)	Stark	7
Dayton	141,359	Obama (10/23), Biden (9/12)	Montgomery	10
Toledo	284,012	Biden (10/23), Romney (9/26)	Lucas	9
Cincinnati	296,550	Obama (9/17, 11/4), Romney (10/25), Ryan (9/25, 10/15)	Hamilton	1
Cleveland	390,928	Obama (10/5, 10/25), Romney (11/4, 11/6), Ryan (10/24)	Cuyahoga	11
Columbus	809,798	Obama (9/17, 10/9, 11/5), Romney (11/5), Ryan (9/29)	Franklin	3

This conclusion is also reinforced if you look at the distribution of campaign events among Ohio's 16 congressional districts. Presidential candidates campaigned in all of the districts, as shown in the map below (and the table above) of the 73 general-election campaign events in 2012.

Presidential Campaign Events by Congressional District in Ohio in 2012



The fact that candidates hew closely to population in allocating campaign events may also be seen by dividing Ohio into four large geographic areas—each containing four of the state's 16 congressional districts (and, therefore, each containing a quarter of the state's population). As can be seen, each of these four geographic areas received almost exactly a quarter of the campaign events. The reason is that when every vote is equal, every vote is equally important.



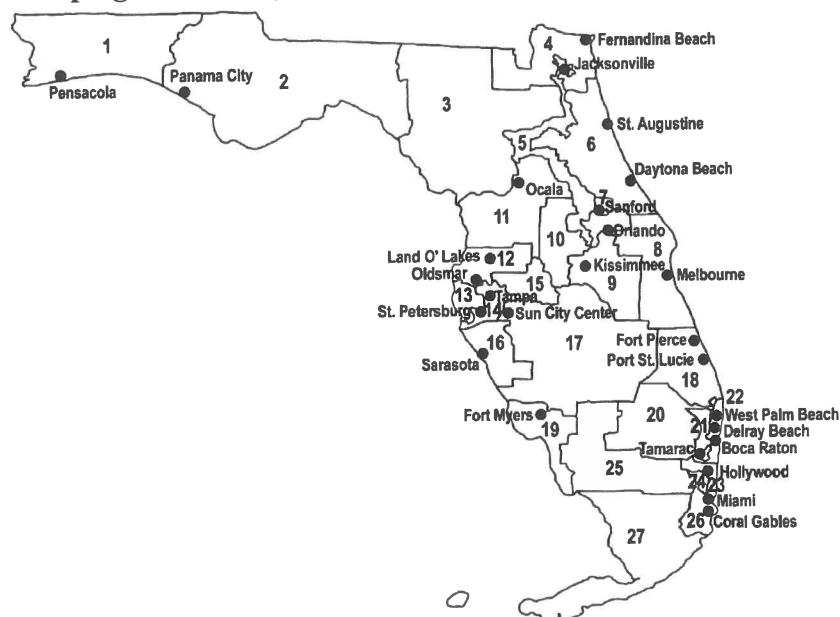
The same pattern of population-based campaigning occurred in other battleground states. Four battleground states (Ohio, Florida, Virginia, and Iowa) accounted for over two-thirds of all campaign events in 2012 (70% of 253).

In Florida (which received 40 campaign events), candidates campaigned throughout the state.

Location of Presidential Campaign Events in Florida in 2012

Place	Population	Candidate and date of campaign event	County	CD
Fernandina Beach	11,705	Ryan (10/29)	Nassau	4
St. Augustine	13,407	Biden (10/20)	St. Johns	6
Oldsmar	13,703	Ryan (9/15)	Pinellas	12
Sun City Center	19,258	Biden (10/19)	Hillsborough	17
Land O' Lakes	31,145	Romney (10/27)	Pasco	12
Panama City	36,167	Ryan (11/3)	Bay	2
Fort Pierce	42,645	Biden (10/19)	St. Lucie	18
Apopka	44,474	Romney (10/6)	Orange	5
Coral Gables	49,411	Obama (10/11), Romney (10/31)	Miami-Dade	26
Pensacola	52,340	Romney (10/27)	Escambia	1
Sarasota	52,811	Biden (10/31), Romney (9/20)	Sarasota	16
Sanford	54,651	Romney (11/5)	Seminole	5
Ocala	56,945	Biden (10/31), Ryan (10/18)	Marion	11
Daytona Beach	62,035	Romney (10/19)	Volusia	6
Delray Beach	62,357	Obama (10/23)	Palm Beach	22
Tamarac	62,557	Biden (9/28)	Broward	20
Kissimmee	63,369	Obama (9/8), Romney (10/27)	Osceola	9
Fort Myers	65,725	Biden (9/29), Ryan (10/18)	Lee	19
Melbourne	77,048	Obama (9/9)	Brevard	8
Boca Raton	87,836	Biden (9/28)	Palm Beach	22
West Palm Beach	101,043	Obama (9/9)	Palm Beach	22
Hollywood	145,236	Obama (11/4)	Broward	23
Port St. Lucie	168,716	Romney (10/7)	St. Lucie	18
St. Petersburg	246,541	Obama (9/8), Romney (10/5)	Pinellas	14
Orlando	249,562	Ryan (9/22)	Orange	7
Tampa	347,645	Obama (10/25), Romney (10/31), Ryan (10/19)	Hillsborough	14
Miami	413,892	Obama (9/20), Romney (9/19 x 2), Ryan (9/22)	Miami-Dade	27
Jacksonville	836,507	Romney (9/12, 10/31)	Duval	5

Presidential Campaign Events by Congressional District in Florida in 2012



Likewise, presidential candidates campaigned throughout the state in Virginia (which received 36 of the nation's 253 campaign events in 2012).

Location of Presidential Campaign Events in Virginia in 2012

Place	Population	Candidate and date of campaign event	CD
Doswell	2,126	Romney (11/1)	7
Woodbridge	4,055	Obama (9/21)	11
Lexington	6,998	Romney (10/8)	6
Fishersville	7,462	Romney (10/4)	6
Abingdon	8,188	Romney (10/5)	9
Bristow	15,137	Obama (11/3)	1
Bristol	17,662	Ryan (10/25)	9
Fairfax	23,461	Obama (10/5, 10/19), Romney (9/13, 11/5)	11
Fredericksburg	27,307	Ryan (10/16)	1
Sterling	27,822	Biden (11/5)	10
Springfield	30,484	Romney (11/2)	8
Danville	42,996	Ryan (9/19)	5
Charlottesville	43,956	Ryan (10/25)	5
Leesburg	45,936	Romney (10/17)	10
Harrisonburg	50,981	Ryan (9/14)	6
Lynchburg	77,113	Biden (10/27), Romney (11/5), Ryan (10/16)	6
Roanoke	97,469	Romney (11/1)	6
Newport News	180,726	Romney (10/8, 11/4), Ryan (9/18)	2
Richmond	210,309	Obama (10/25), Biden (11/5), Romney (9/8, 10/12), Ryan (11/3, 11/6)	3
Chesapeake	228,417	Romney (10/17)	4
Chesterfield	323,856	Biden (9/25)	4
Virginia Beach	447,021	Obama (9/27), Romney (9/8, 11/1)	2

Presidential Campaign Events by Congressional District in Florida in 2012

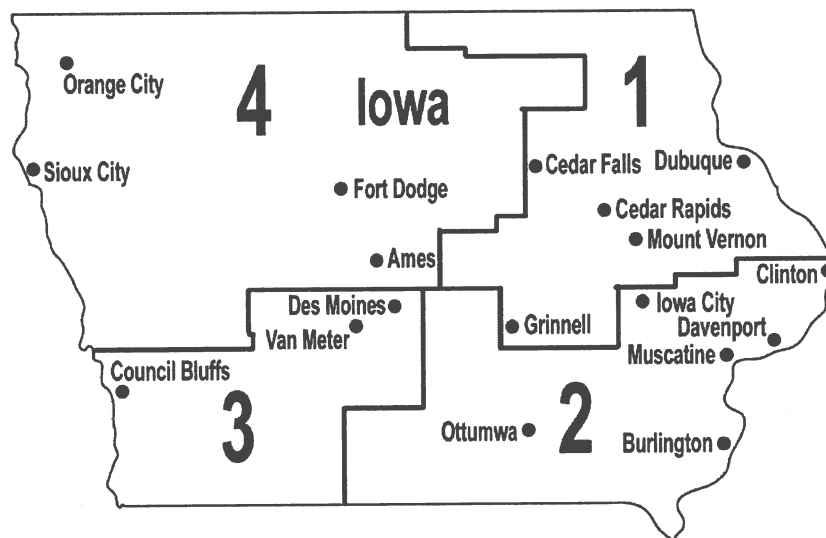


Similarly, presidential candidates campaigned throughout the state in Iowa (which received 27 of the nation's 253 campaign events in 2012).

Location of Presidential Campaign Events in Iowa in 2012

Place	Population	Candidate and date of campaign event	County	CD
Van Meter	1,016	Romney (10/9)	Dallas	3
Mount Vernon	4,506	Obama (10/17)	Linn	1
Orange City	6,004	Romney (9/7)	Sioux	4
Grinnell	9,218	Biden (9/18)	Poweshiek	1
Muscatine	22,886	Biden (11/1), Ryan (10/2)	Muscatine	2
Fort Dodge	25,206	Biden (11/1)	Webster	4
Ottumwa	25,023	Biden (9/18)	Wapello	2
Burlington	25,663	Biden (9/17), Ryan (10/2)	Des Moines	2
Clinton	26,885	Ryan (10/2)	Clinton	2
Cedar Falls	39,260	Ryan (11/2)	Black Hawk	1
Dubuque	57,637	Obama (11/3), Romney (11/3), Ryan (10/1)	Dubuque	1
Ames	58,965	Romney (10/25)	Story	4
Council Bluffs	62,230	Biden (10/4), Ryan (10/21)	Pottawattamie	3
Iowa City	67,862	Obama-Biden (9/7)	Johnson	2
Sioux City	82,684	Ryan (10/21)	Woodbury	4
Davenport	99,685	Obama (10/24), Romney (10/29)	Scott	2
Cedar Rapids	126,326	Romney (10/24)	Linn	1
Des Moines	203,433	Obama (11/5), Romney (11/3), Ryan (9/17, 11/5)	Polk	3

Presidential Campaign Events by Congressional District in Iowa in 2012



In summary, presidential candidates—advised by the nation's most astute political strategists—hew closely to population in allocating campaign events. The reason is simple. When every vote is equal and the winner is the candidate receiving the most popular votes, every vote (big city, rural, etc.) is equally important.

How a Nationwide Presidential Campaign Would Be Run

In a nationwide campaign, candidates would campaign nationwide in the same way as they do today *inside* battleground states—that is, *they would allocate their campaigning based on population*. If you divide the country's population (309,785,186) by the number of 2016 general-election campaign events (399), you get 776,404. The table below distributes 399 campaign events among the states by dividing each state's population by 776,404. The table shows that candidates would campaign in *all 50 states* (whereas they campaign in only a relatively few battleground states under the current state-by-state winner-take-all method of awarding electoral votes).

State	Population 2010	Campaign events based on population	Actual 2016 campaign events
Alabama	4,802,982	6	
Alaska	721,523	1	
Arizona	6,412,700	8	10
Arkansas	2,926,229	4	
California	37,341,989	48	1
Colorado	5,044,930	6	19
Connecticut	3,581,628	5	1
Delaware	900,877	1	
D.C.	601,723	1	
Florida	18,900,773	24	71
Georgia	9,727,566	13	3
Hawaii	1,366,862	2	
Idaho	1,573,499	2	
Illinois	12,864,380	17	1
Indiana	6,501,582	8	2
Iowa	3,053,787	4	21
Kansas	2,863,813	4	
Kentucky	4,350,606	6	
Louisiana	4,553,962	6	
Maine	1,333,074	2	3
Maryland	5,789,929	7	
Massachusetts	6,559,644	8	
Michigan	9,911,626	13	22
Minnesota	5,314,879	7	2
Mississippi	2,978,240	4	1
Missouri	6,011,478	8	2
Montana	994,416	1	
Nebraska	1,831,825	2	2
Nevada	2,709,432	3	17
New Hampshire	1,321,445	2	21
New Jersey	8,807,501	11	
New Mexico	2,067,273	3	3
New York	19,421,055	25	
North Carolina	9,565,781	12	55
North Dakota	675,905	1	
Ohio	11,568,495	15	48
Oklahoma	3,764,882	5	
Oregon	3,848,606	5	
Pennsylvania	12,734,905	16	54
Rhode Island	1,055,247	1	
South Carolina	4,645,975	6	
South Dakota	819,761	1	
Tennessee	6,375,431	8	
Texas	25,268,418	33	1
Utah	2,770,765	4	1
Vermont	630,337	1	
Virginia	8,037,736	10	23
Washington	6,753,369	9	1
West Virginia	1,859,815	2	
Wisconsin	5,698,230	7	14
Wyoming	568,300	1	
Total	309,785,186	399	399

Small States Are Ignored Under Current Winner-Take-All Rule

The states are arranged according to their number of electoral votes.

Electoral votes	State	2012 events	2016 events
3	Alaska		
3	Delaware		
3	District of Columbia		
3	Montana		
3	North Dakota		
3	South Dakota		
3	Vermont		
3	Wyoming		
4	New Hampshire	13	21
4	Maine		3
4	Hawaii		
4	Idaho		
4	Rhode Island		
5	New Mexico		3
5	Nebraska		2
5	West Virginia		
6	Iowa	27	21
6	Nevada	13	17
6	Mississippi		1
6	Utah		1
6	Arkansas		
6	Kansas		
7	Connecticut		1
7	Oklahoma		
7	Oregon		
8	Kentucky		
8	Louisiana		
9	Colorado	23	19
9	Alabama		
9	South Carolina		
10	Wisconsin	18	14
10	Minnesota	1	2
10	Missouri		2
10	Maryland		
11	Arizona		10
11	Indiana		2
11	Massachusetts		
11	Tennessee		
12	Washington		1
13	Virginia	36	23
14	New Jersey		
15	North Carolina	3	55
16	Michigan	1	22
16	Georgia		3
18	Ohio	73	48
20	Pennsylvania	5	54
20	Illinois		1
29	Florida	40	71
29	New York		
38	Texas		1
55	California		1
538	Total	253	399

● **In 2012, only 1 of the 13 smallest states** (3 or 4 electoral votes) received any of the 253 general-election campaign events, namely the closely divided battleground state of New Hampshire. The small states are ignored not because they are small, but because (except New Hampshire), they are one-party states in presidential elections.

● **In 2012, only 3 of the 25 smallest states** (7 or fewer electoral votes) received any of the general-election campaign events. The 3 states were the closely divided battleground states of New Hampshire, Iowa, and Nevada. Note that 80% of the general-election campaign events were focused on only 9 closely divided battleground states—mostly larger states. In fact, the winner-take-all method of awarding electoral votes shifts power from small states and medium-sized states to *bigger* states.

● **In 2016, only 2 of the 13 smallest states** (3 or 4 electoral votes) received any of the 399 general-election campaign events. New Hampshire received 21 because it was a closely divided battleground state. Maine (which awards electoral votes by congressional district) received 3 campaign events because its 2nd congressional district was closely divided (and, indeed, Trump carried it). All the other small states were ignored.

● **In 2016, only 4 of the 25 smallest states** (7 or fewer electoral votes) received any general-election campaign events. New Hampshire, Iowa, and Nevada received attention because they were closely divided battleground states. As previously mentioned, Maine received some attention because its 2nd congressional district was closely divided.

Rural States are Disadvantaged under the Current State-By-State Winner-Take-All Method of Awarding Electoral Votes

Political influence in the Electoral College is based on whether the state is a closely divided battleground state. The current state-by-state winner-take-all method of awarding electoral votes does not enhance the influence of rural states, because most rural states are not battleground states.

The 10 most rural states are:

- Vermont (60.61% rural),
- Maine (57.86% rural),
- West Virginia (53.75% rural),
- Mississippi (50.20% rural),
- South Dakota (47.14% rural),
- Arkansas (46.10% rural),
- Montana (44.69% rural),
- North Dakota (44.68% rural),
- Alabama (43.74% rural), and
- Kentucky (43.13% rural).

None of the 10 most rural states is a closely divided battleground state.

Column 2 of the table on the next page shows, for each state, the rural population (using the 2000 definition found in the *Statistical Abstract of the United States*). Column 3 shows the state's total population. Column 4 shows the rural percentage (column 2 divided by column 3). Column 5 shows the rural "index" (obtained by dividing the state's rural percentage by the overall national rural percentage of 20.11%). An index above 100 indicates that the state is more rural than the nation as a whole, whereas an index below 100 indicates that the state is less rural. Thirty-three states have an index above 100 (meaning that more than 20.11% of their population is rural), whereas 18 states have an index below 100 (that is, they are less rural than the nation as a whole).

Rural population of the various states

State	Rural population	Total population	Rural percent	Rural index
Vermont	376,379	621,000	60.61%	301
Maine	762,045	1,317,000	57.86%	288
West Virginia	975,564	1,815,000	53.75%	267
Mississippi	1,457,307	2,903,000	50.20%	250
South Dakota	363,417	771,000	47.14%	234
Arkansas	1,269,221	2,753,000	46.10%	229
Montana	414,317	927,000	44.69%	222
North Dakota	283,242	634,000	44.68%	222
Alabama	1,981,427	4,530,000	43.74%	218
Kentucky	1,787,969	4,146,000	43.13%	214
New Hampshire	503,451	1,300,000	38.73%	193
Iowa	1,138,892	2,954,000	38.55%	192
South Carolina	1,584,888	4,198,000	37.75%	188
North Carolina	3,199,831	8,541,000	37.46%	186
Tennessee	2,069,265	5,901,000	35.07%	174
Wyoming	172,438	507,000	34.01%	169
Oklahoma	1,196,091	3,524,000	33.94%	169
Alaska	215,675	655,000	32.93%	164
Idaho	434,456	1,393,000	31.19%	155
Wisconsin	1,700,032	5,509,000	30.86%	153
Missouri	1,711,769	5,755,000	29.74%	148
Nebraska	517,538	1,747,000	29.62%	147
Indiana	1,776,474	6,238,000	28.48%	142
Kansas	767,749	2,736,000	28.06%	140
Minnesota	1,429,420	5,101,000	28.02%	139
Louisiana	1,223,311	4,516,000	27.09%	135
Georgia	2,322,290	8,829,000	26.30%	131
Virginia	1,908,560	7,460,000	25.58%	127
Michigan	2,518,987	10,113,000	24.91%	124
New Mexico	455,545	1,903,000	23.94%	119
Pennsylvania	2,816,953	12,406,000	22.71%	113
Ohio	2,570,811	11,459,000	22.43%	112
Oregon	727,255	3,595,000	20.23%	101
Delaware	155,842	830,000	18.78%	93
Washington	1,063,015	6,204,000	17.13%	85
Texas	3,647,539	22,490,000	16.22%	81
Colorado	668,076	4,601,000	14.52%	72
Maryland	737,818	5,558,000	13.27%	66
New York	2,373,875	19,227,000	12.35%	61
Connecticut	417,506	3,504,000	11.92%	59
Illinois	1,509,773	12,714,000	11.87%	59
Utah	262,825	2,389,000	11.00%	55
Arizona	607,097	5,744,000	10.57%	53
Florida	1,712,358	17,397,000	9.84%	49
Rhode Island	95,173	1,081,000	8.80%	44
Massachusetts	547,730	6,417,000	8.54%	42
Hawaii	103,312	1,263,000	8.18%	41
Nevada	169,611	2,335,000	7.26%	36
New Jersey	475,263	8,699,000	5.46%	27
California	1,881,985	35,894,000	5.24%	26
D.C.	0	554,000	0.00%	0
Total	59,061,367	293,658,000	20.11%	100

“Agreement among the States to Elect the President by National Popular Vote”

July 3, 2018

The National Popular Vote bill would guarantee the Presidency to the candidate who receives the most popular votes in all 50 states and the District of Columbia. The bill would ensure that every vote will be equal throughout the U.S. and that *every* vote, in *every* state, will matter in *every* presidential election.

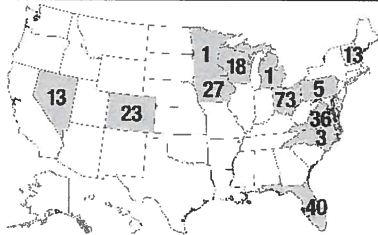
Since 2006, the bill has been enacted into law in 12 states possessing 172 electoral votes, including 4 small jurisdictions (RI, VT, HI, DC), 4 medium-sized states (CT, MD, MA, WA), and 4 large states (NJ, IL, NY, CA). The bill will take effect when enacted by states with 98 more electoral votes. The bill has already passed at least one chamber in 11 additional states with 89 more electoral votes, including approvals by the New Mexico Senate, Oregon House, Arizona House, Oklahoma Senate, and unanimous committee votes in two other states (GA, MO). A total of 3,125 state legislators from all 50 states have endorsed it.

The shortcomings of the current system of electing the President stem from “winner-take-all” laws that have been enacted by state legislatures in 48 states. These laws award all of a state’s electoral votes to the candidate receiving the most popular votes in each state.

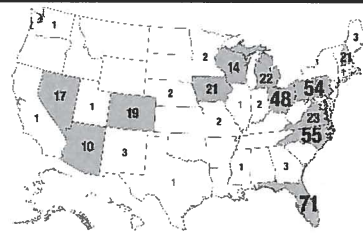
Because of these state winner-take-all laws, five of our 45 Presidents have come into office without winning the most popular votes nationwide. Near-misses are also common. In 2004, a shift of 59,393 votes in Ohio would have defeated President George W. Bush despite his nationwide lead of over 3,000,000 votes. The national popular vote winner would also have been defeated by a shift of 9,246 votes in 1976, a shift of 77,726 in 1968, a shift of 9,212 in 1960, a shift of 20,360 in 1948, or a shift of 1,711 votes in 1916.

Another effect of state winner-take-all laws is that presidential candidates have no reason to campaign in, advertise in, or pay attention to voters in states where they are safely ahead or hopelessly behind. In 2012, *all* of the general-election campaign events and virtually all expenditures were concentrated in the 12 states where Romney’s support was between 45% and 51%. Two-thirds of the events (176 of 253) were in just 4 closely divided “battleground” states (OH, FL, VA, IA). Thirty-eight states were ignored, including 12 of the 13 smallest states and almost all rural, agricultural, Western, Southern, and New England states. Similarly, in 2016, almost all campaign events (94%) were in the 12 states where Trump’s support was between 43% and 51%. Two-thirds of the events (273 of 399) were in 6 states (OH, FL, VA, NC, PA, MI).

Concentration of Campaign Events in 2012



Concentration of Campaign Events in 2016



The U.S. Constitution (Article II, Section 1) gives states exclusive control over awarding their electoral votes: “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors....” The winner-take-all method of awarding electoral votes is state law. It is *not* in the U.S. Constitution. It was not debated at the 1787 Constitutional Convention or mentioned in the *Federalist Papers*. It was used by only three states in the first presidential election (and all three repealed it by 1800). It was not until the 11th presidential election (1828) that even half the states used winner-take-all laws.

The National Popular Vote interstate compact will go into effect when enacted by states possessing a majority of the electoral votes—that is, enough to elect a President (270 of 538). At that time, all of the presidential electors from all of the compacting states will be supporters of the presidential candidate who received the most popular votes in all 50 states and DC. Because the compacting states possess at least 270 electors, the President will be the candidate receiving the most popular votes in all 50 states and DC.

The National Popular Vote bill retains the Electoral College and preserves state control of elections.

For additional information, see our book *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* (downloadable for free at www.NationalPopularVote.com).

Total Presidential Vote 1960–2016

Election	Democratic	Republican
1960	34,226,731	34,108,157
1964	43,129,566	27,178,188
1968	31,275,166	31,785,480
1972	29,170,383	47,169,911
1976	40,830,763	39,147,793
1980	35,483,883	43,904,153
1984	37,577,185	54,455,075
1988	41,809,074	48,886,097
1992	44,909,326	39,103,882
1996	47,402,357	39,198,755
2000	50,992,335	50,455,156
2004	59,028,111	62,040,610
2008	69,456,898	59,934,814
2012	65,897,727	60,930,782
2016	<u>65,853,652</u>	<u>62,985,134</u>
TOTAL	697,043,157	701,283,987

July 27, 2017

The Electoral College Is a National Security Threat

Politico Op-Ed

By Matthew Olsen and Benjamin Haas

September 20, 2017

In *Federalist* No. 68, his pseudonymous essay on “The Mode of Electing the President,” Alexander Hamilton wrote that the Electoral College could shield the United States “from the desire in foreign powers to gain an improper ascendant in our councils.” Because of the “transient existence” and dispersed makeup of the electors, he argued, hostile countries would find it too expensive and time-consuming to inject “sinister bias” into the process of choosing a president. At the time, the new American leaders feared meddling from Great Britain, their former colonial master, or perhaps from other powers such as France, and they designed a system to minimize the prospect that Europe’s aging monarchies could seize control of their young democracy.

Hamilton and his colleagues never could have envisioned a year like 2016, when an enemy state—Russia—was able to manipulate America’s election process with stunning effectiveness. But it’s clear the national security rationale for the Electoral College is outdated and therefore it should be retired. Simply put, it enables foreign powers to more easily pierce the very shield Hamilton imagined it would be.

In Hamilton’s day, as he argued, it would have been nearly impossible for a hostile power to co-opt dozens of briefly chosen electors flung across 13 states with primitive roads. But in the social media age, the Electoral College system provides ripe microtargeting grounds for foreign actors who intend to sabotage presidential elections via information and disinformation campaigns, as well as by hacking our voting infrastructure. One reason is that citizens in certain states simply have more voting power than citizens in other states, such as Texas and California. This makes it easier for malign outside forces to direct their efforts.

But what if the national popular vote determined the president instead of the Electoral College? No voter would be more electorally powerful than another. It would be more difficult for a foreign entity to sway many millions of voters scattered across the country than concentrated groups of tens of thousands of voters in just a few states. And it would be more difficult to tamper with voting systems on a nationwide basis than to hack into a handful of databases in crucial swing districts, which could alter an election’s outcome. Yes, a foreign entity could disseminate messages to major cities across the entire country or try to carry out a broad-based cyberattack, but widespread actions of this sort would be not only more resource-intensive, but also more easily noticed, exposed and addressed.

Congressional investigators are currently examining Russia’s 2016 disinformation campaign. Senator Mark Warner of Virginia, the ranking member of the Senate Intelligence Committee, has publicly called out Russian microtargeting in 2016 swing states. In March, Warner highlighted reports of “upwards of 1,000 paid internet trolls working out of a facility in Russia, in effect, taking over series of computers, which is then called a botnet,” and he raised the question of whether these trolls targeted voters in Wisconsin, Michigan and Pennsylvania. Donald Trump, of course, won those three states by a combined total of fewer than 80,000 votes, securing him an Electoral College victory and a four-year trip to the Oval Office, despite losing the national popular vote by nearly 3 million votes.

Facebook has already acknowledged that fake users linked to Russia spent \$100,000 running political ads on its platform, on polarizing topics such as gay rights, gun control, immigration and race. Some of these ads were aimed at specific geographic areas. But we don't yet know the full extent of Russia's microtargeting efforts or whether they involved any cooperation with Trump's campaign. And definitive answers to these questions may not emerge until Congress and special counsel Robert Mueller complete their investigations.

Apart from Russia's disinformation campaign during the election, there also is reason to be alarmed about Russian cyberattacks on voting systems, including voter databases and electronic poll books used to verify voters' identities and registration status. Recent reports indicate that Russian hackers targeted election systems in at least 21 states, and that the scope of these attacks exceeded what had been previously disclosed. These revelations are consistent with prior findings of intelligence agencies that Russian spies have been conducting reconnaissance on U.S. election processes and technology.

But setting aside for now worries about what happened in 2016, it is equally—if not more—important to consider the startling potential for interference in future presidential elections. As Clint Watts, a counterterrorism expert and former FBI agent, testified in a March hearing before the Senate Intelligence Committee, “Today, you can create content, gain the audience, build the bots, pick out the election and even the voters that are valued the most in swing states and actually insert the right content in a deliberate period.” Furthermore, he explained that outside actors are capable of cleverly disguising bots as human beings with local flavor:

“If you do appropriate target audience analysis on social media, you can actually identify an audience in a foreign country or in the United States [and] parse out all of their preferences ... If you inhale all of the accounts of people in Wisconsin, you identify the most common terms in it, you just recreate accounts that look exactly like people from Wisconsin.”

And choosing the right voters to target is not a task that requires domestic assistance. As Issie Lapowsky of *Wired* recently explained, “there's nothing preventing a Russian actor or anyone else from reading the news and understanding the American electorate, and thanks to readily available digital tools, targeting that electorate is simple.”

There are additional ways to help combat foreign interference in presidential elections. These include hardening our voting systems through better cybersecurity, making public the false narratives that adversaries push through fake news stories and encouraging social media companies to identify and block fake accounts and bogus ad campaigns designed to tilt our elections. These methods should be fully considered and, if appropriate, implemented. But ending the Electoral College should be central to the discussion.

Democrats may currently be more sympathetic to this cause given the outcome of the 2016 presidential election, but this should not be a partisan issue. Protecting U.S. elections from foreign interference is a legitimate national security concern that all Americans should be able to embrace. Both state and nonstate actors may have an interest in influencing our future elections, and there's no telling right now which presidential candidates they will prefer. In addition, although Russia clearly favored Trump in the 2016 election, it also demonstrated its willingness to gather ammunition on Republicans. According to the intelligence community's unclassified report on Russia's interference, “Russia collected on some Republican-affiliated targets but did not conduct a comparable disclosure campaign.” If it were in Moscow's interest to promote a Democrat's bid for the White House or damage a Republican's, it would not hesitate to do so.

“Today it is the Democrats. Tomorrow it could be us,” Florida Senator Marco Rubio stated in an October 2016 warning to his fellow Republicans against exploiting information hacked by Russia and disclosed by WikiLeaks.

There are, of course, other arguments against the Electoral College: that an individual’s voting power should not be diluted or strengthened by virtue of geographic location, especially for an office that is supposed to represent every citizen equally; that it does not fulfill one of the original intentions of our framers—to exercise discretion and buffer the whims of the masses; that it has a dark history involving pro-slavery sentiments; that it often gives white, rural voters more voting power than minorities living in cities; that despite this, it still does not encourage candidates to campaign in rural areas but rather focuses their attention on cities in a smattering of swing states; and that swing states receive more federal funds than other states. But now, it’s time to also examine the Electoral College through a national security lens.

Hamilton certainly deserves his towering reputation as “the most important Founding Father who never became president,” but at least on the supposed national security benefits of the Electoral College, his argument no longer holds. To help protect our elections from foreign interference, we should change the way we choose our presidents.

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Benjamin Haas graduated from West Point in 2009 and was an intelligence officer in the Army for five years, including two deployments to Afghanistan. He is now a student at Stanford Law School. You can follow him on Twitter (@BenjaminEHaas).

14 Videos Explaining the National Popular Vote Bill

April 24, 2017

- National Popular Vote: Introduction: <https://www.youtube.com/watch?v=q0rOKo9BWEU>
- Myths about Constitutionality: https://www.youtube.com/watch?v=ubIeQ-uO_b0
- Myths about Small States: <https://www.youtube.com/watch?v=XWGWPTILYnk>
- Myths about Big Cities: https://www.youtube.com/watch?v=_gbwv5hf2Ps
- Myths about Big States and Big Counties: <https://www.youtube.com/watch?v=Kfm6O1Fm14w>
- Myths about Fraud: <https://www.youtube.com/watch?v=4DdeFNCvVW0>
- Myths about Post-Election Rule Changes: <https://www.youtube.com/watch?v=G2Vdb5pNMLI>
- Myths about Recounts: <https://www.youtube.com/watch?v=z8FwrXRmGA4>
- Myths about Compacts and Congressional Consent: <https://www.youtube.com/watch?v=1fPQfe0dkP8>
- Myths About Faithless Electors: <https://www.youtube.com/watch?v=eUIb2lbaG0w>
- Myths About Achilles' Heel: <https://www.youtube.com/watch?v=HnjexgH9Ufw>
- Myths About 15% Presidents: https://www.youtube.com/watch?v=X_IUIaf9egA
- Myths About Hurricanes: <https://www.youtube.com/watch?v=4Afz7u9h56o>
- Myths About Missing Vote Counts: <https://www.youtube.com/watch?v=Zn2UpnsCOvc>

Non-Citizens Affect Allocation of Electoral Votes under Current System

Under federal law, non-citizens cannot vote in presidential elections. Nonetheless, non-citizens significantly impact presidential elections because they affect the allocation of electoral votes among the states.

The U.S. Constitution states:

“Representatives ... shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by ... the whole Number of free Persons.”

Because of the winner-take-all rule, *legal* voters in a state that acquired additional electoral votes by virtue of the disproportionate presence of non-citizens deliver an enlarged bloc of electoral votes to the candidate receiving the most popular votes in their state. That is, the influence of the *legal* voters in such states is increased because of the presence of non-citizens.

Overall, the Democrats have a net 10 electoral-vote advantage in the 2012, 2016, and 2020 elections from the 15 states whose representation was affected by the counting of non-citizens in allocating electoral votes among the states.

Democratic non-battleground states gained 7 electoral votes:

- +5 for California
- +1 for New York
- +1 for Washington state.

Republican non-battleground states lost 3 electoral votes:

- +2 for Texas.
- -1 for Indiana
- -1 for Missouri
- -1 for Louisiana
- -1 for Montana
- -1 for Oklahoma.

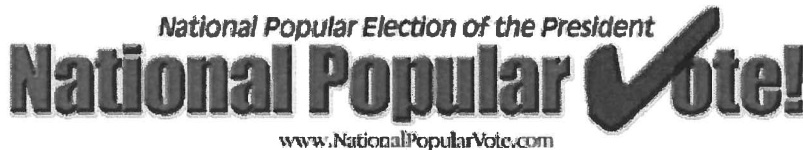
Six battleground states were affected:

- +1 Florida
- -1 for Iowa
- -1 for Michigan
- -1 for North Carolina
- -1 for Ohio
- -1 for Pennsylvania.

Battleground states can, by definition, go either way, and therefore do not constitute a built-in advantage to either party.

Excluding non-citizens from the calculation used to apportion seats in the U.S. House of Representatives would require a federal constitutional amendment.

The National Popular Vote compact would eliminate the distortion in presidential elections caused by the disproportionate presence of non-citizens by guaranteeing the Presidency to the candidate who receives the most popular votes in all 50 states and the District of Columbia.



February 22, 2016

Answering Criticisms of the National Popular Vote bill (HB 929 and SB 376)

This memorandum provides answers to Hans von Spakovsky's incorrect claims that a nationwide popular vote for President would

- (1) enable the 11 biggest states to control the outcome of presidential elections;
- (2) diminish the influence of rural areas;
- (3) elevate the importance of big urban centers;
- (4) diminish the influence of smaller states;
- (5) lead to contentious fights over provisional ballots;
- (6) lead to more recounts;
- (7) encourage voter fraud;
- (8) lead to presidents being elected with small vote percentages;
- (9) radicalize American politics;
- (10) violate the Constitution;
- (11) require congressional consent to take effect; and
- (12) avoid the consent of a majority of Americans.

1. Eleven big states controlling the outcome of presidential elections

Hans von Spakovsky says that the National Popular Vote bill

“would give the most populous states a controlling majority of the Electoral College, letting the voters of as few as 11 states control the outcome of presidential elections.”¹

The facts are that the 11 biggest states already contain a majority of the electoral votes (270 of 538). Von Spakovsky's claim that the biggest states would “control the outcome” is based on the politically preposterous scenario that a candidate would win 100% of the popular vote in the 11 biggest states and 0% in the 38 other states.

The fact is that that *no* big state delivered more than 63% of its popular vote to *any* presidential candidate in the 2000, 2004, 2008, or 2012 elections. Moreover, 5 of the biggest states (Ohio, Florida, Virginia, Pennsylvania, Michigan, and North Carolina) are closely divided “battleground” states or competitive states that are nearer 50%–50%.

Moreover, the 11 biggest states are a lock for either political party. When President George W. Bush won in 2000 and 2004, the biggest states divided 6–6, and he carried Texas, Florida, Ohio, North Carolina, Georgia, and Virginia.

¹ All quotations of Hans Von Spakovsky are from “Protecting Electoral College from popular vote” in *Washington Times* on October 26, 2011, unless otherwise indicated.

In criticizing the idea of a nationwide vote for President, von Spakovsky ignores the fact that 50.01% (not 100%) of the voters of the same 11 biggest states could elect a President under the *current* state-by-state winner-take-all system.

More importantly, von Spakovsky ignores the fact that a small handful of states control the outcome of presidential elections *today* under the *current* state-by-state winner-take-all system. Under the *current* system, presidential candidates have no reason to pay attention to the issues of concern to voters in states where the statewide outcome is a foregone conclusion. Two-thirds of the 2012 general-election campaign events (176 of 253) were in just 4 states (Ohio, Florida, Virginia, and Iowa). Georgia (along with 37 other states) was totally ignored.

In a nationwide popular vote for President, every vote in every state would be equal throughout the United States. A vote cast in one of the 11 biggest states would be no more (or less) valuable or controlling than a vote cast anywhere else. The National Popular Vote bill would ensure that *every* vote, in *every* state, will be politically relevant in *every* presidential election.

See our video about big states at <https://www.youtube.com/watch?v=Kfm6O1Fm14w>.

2. Diminishing the influence of rural areas

Hans von Spakovsky says that the National Popular Vote bill would

“diminish the influence of rural areas.”

Under the current state-by-state winner-take-all method of awarding electoral votes, a state’s political influence is based on whether it is a closely divided “battleground” state. In 2012, the only states that received any campaign events and significant advertising expenditures were the 12 states where the outcome was between 45% and 51% Republican—that is, within 3 percentage points of Romney’s nationwide percentage of 48%. The other 38 states were ignored.

Not surprisingly von Spakovsky offers no data to back up his assertion. The reason for this is that his assertion is totally false.

The facts are that the current system diminishes the influence of rural states because *none* of the 10 most rural states are “battleground” states. The 10 most rural states are Vermont (60.61% rural), Maine (57.86% rural), West Virginia (53.75% rural), Mississippi (50.20% rural), South Dakota (47.14% rural), Arkansas (46.10% rural), Montana (44.69% rural), North Dakota (44.68% rural), Alabama (43.74% rural), and Kentucky (43.13% rural).

3. Elevating the importance of big urban centers

Hans von Spakovsky says that the National Popular Vote bill would

“elevate the importance of big urban centers.”

This concern arises from the misimpression that the big cities have more people than they actually do, and that they are more Democratic than they actually are, and from misinformation about how actual presidential campaigns are run.

The 10 biggest cities in the United States (San Jose is the 10th) together account for only 8% of the U.S. population.

The 100 biggest cities contain just *one-sixth* of the U.S. population. The 100 biggest cities voted **63% Democratic** in 2004.

By coincidence, a different *one-sixth* of the U.S. population live outside the nation's Metropolitan Statistical Areas (MSA's). This rural population voted **60% Republican**.

The remaining two thirds of the U.S. population lives *inside* a Metropolitan Statistical Area, but *outside* the central city. These *suburban* areas are evenly divided politically.

We don't have to speculate how presidential campaigns would be run in an election in which every vote is equal and the winner is the candidate who receives the most popular votes—because we already know.

Inside the handful of closely divided “battleground” states—such as Ohio, Florida, Virginia, and Iowa—every vote is *already* equal, and the winner is the candidate who receives the most popular votes *inside* those states.

Consider Ohio—the state that received over a quarter of the entire country's 253 general-election campaign events (and a similar percentage of the ad spending) in 2012.

Here is how real-world presidential candidates—advised by the nation's most astute strategists—campaign in the nation's most critically important “battleground” state in 2012:

- The 4 biggest metro areas (with 54% of the state's population) received 52% of Ohio's 73 general-election campaign events—that is, almost exactly their share of the population.
- The 7 metro areas centered around medium-sized cities (with 23.6% of the state's population) received 23.3% of Ohio's 73 events—that is, almost exactly their share of the population.
- The 53 rural counties outside the state's Metropolitan Statistical Areas (with 22% of the state's population) received 25% of Ohio's 73 events—that is, almost exactly their share of the population (actually, a tad more).

In short, actual presidential candidates campaign everywhere—big metro areas, medium-sized metro areas, and rural areas—in elections in which every vote is equal, and the winner is the candidate who receives the most popular votes.

The same pattern exists inside the other major “battleground” states (Florida, Virginia, and Iowa) during the general-election campaign. These three states (along with Ohio) account for over two-thirds of the nation's campaign events (and a similar fraction of campaign expenditures).

No presidential campaign is going to ignore the rural one-sixth of the U.S. population any more than it is going to ignore the urban one-sixth. It is political preposterous to think that well-run campaigns would operate in any other way.

There is, of course, nothing in the National Popular Vote bill that mentions cities—much less anything that “elevates the importance of big urban centers.” Under a nationwide vote for President, every vote is *equal*. The one-sixth of the people who live in the nation's 100 biggest cities are no more important—or less important—than the one-sixth of the people who live in rural areas.

See our video on big cities at https://www.youtube.com/watch?v=_gbwv5hf2Ps.

4. Diminishing the influence of smaller states

Hans von Spakovsky says that the National Popular Vote bill would

“diminish the influence of smaller states.”

The small states (the 13 states with only three or four electoral votes) are the most disadvantaged and ignored group of states under the current state-by-state winner-take-all method of awarding electoral votes. The reason is that political power in presidential elections comes from being a closely divided battleground state, and 12 of the 13 smallest states are noncompetitive states in presidential elections.

These 12 small non-battleground states are not ignored because they are small, but because they are one-party states in presidential elections. In the last six presidential elections, six of the 13 small states have almost always gone Republican (Alaska, Idaho, Montana, North Dakota, South Dakota, and Wyoming), while 6 other small jurisdictions have regularly gone Democratic (Delaware, the District of Columbia, Hawaii, Maine, Rhode Island, and Vermont).

The political irrelevance of the 12 smallest states under the *current* system becomes especially clear if you notice that these states together have the same population—12 million—as the closely divided battleground state of Ohio. The 12 small states have 40 electoral votes—more than twice Ohio’s 18 electoral votes. However, Ohio received 73 of the nation’s 253 post-convention campaign events in 2012, while the 12 small non-battleground states received none.

Now let’s look at the one state, among the smallest 13 states, that receives any general-election campaign attention. New Hampshire received 12 of the 253 general-election campaign events. New Hampshire received this much attention because political clout comes from being a closely divided battleground state (not from being a small state). In a national popular vote for President, *every vote would be equal*. Under National Popular Vote, a vote in Wyoming would suddenly become as important as a vote in New Hampshire. If every vote were equal, each of the 12 smallest states would be likely to receive about 1 general-election event, instead of just one state (New Hampshire) receiving 12 events.

The fact that the small states are disadvantaged by the current state-by-state winner-take-all system has long been recognized by prominent officials from those states. In 1966, Delaware led a group of 12 predominantly small states in suing New York (then a closely divided battleground state) in the U.S. Supreme Court in an (unsuccessful) effort to get state winner-take-all statutes declared unconstitutional.

See our video on small states at <https://www.youtube.com/watch?v=XWGWPTILYnk>.

5. Contentious fights over provisional ballots

Hans von Spakovsky has stated that a nationwide election of the President would lead to

“contentious fights over provisional ballots”

and has also stated

“Every additional vote found anywhere in the country could make the difference to the losing candidate.”

The fact is that provisional ballots are far more likely to lead to contentious fights under the *current* state-by-state winner-take-all system than under a nationwide vote.

One reason is that the closely divided “battleground” state of Ohio has historically had an unusually large number of provisional ballots. For example, there were more than 150,000 provisional ballots in 2004 in Ohio, where President George W. Bush’s margin was only 118,601. The national outcome of the 2004 election in the Electoral College would have been

reversed with a switch of 59,393 votes out of a total of 5,627,903 votes in Ohio (despite President Bush's nationwide lead of over 3,000,000 votes). Provisional ballots are either accepted or rejected within about two weeks after an election (and about 71% are generally accepted). After all the valid provisional ballots were counted in Ohio in 2004, President Bush was declared the winner of Ohio (and hence nationally).

If provisional ballots had existed in Florida in 2000, provisional ballots would clearly have played a critical role in determining the winner (where the winner's final statewide margin was only 537 votes).

In 2008, the number of provisional ballots exceeded the leading candidate's margin in Missouri (McCain's 3,903-vote margin out of 2,925,205 votes), North Carolina (Obama's 14,177-vote margin out of 4,310,789 votes), and Indiana (Obama's 28,391-vote margin out of 2,751,054).

There were 12 closely divided battleground states in the 2012 election. Thus, there were 12 states where provisional ballots could potentially have played a decisive role in determining the winner under the current state-by-state winner-take-all system.

We agree with von Spakovsky that any vote "anywhere in the country could make the difference" in a nationwide vote for President. Indeed, the most important reason to adopt the National Popular Vote plan is to make *every* vote in *every* state politically relevant in *every* presidential election. However, we believe that all votes should be carefully scrutinized, vigorously contested (if appropriate), and ultimately counted if judged to be valid. We do not view the fact that every vote "could make the difference" as an evil.

6. Recounts

Hans von Spakovsky has stated that the current state-by-state winner-take-all method of awarding electoral votes

"reduces the possibility of a recount"

and

"has provided orderly elections for more than 200 years."

Nothing could be further from the facts.

The current state-by-state winner-take-all system of electing the President has repeatedly produced unnecessary artificial crises that would not have arisen if there had been a single large national pool of votes and if the winner had been the candidate who received the most popular votes nationwide.

There have been five litigated state counts in the nation's 57 presidential elections under the current system. This high frequency contrasts with relative rarity of recounts in elections in which the winner is simply the candidate receiving the most votes from those served by the office. There were only 22 recounts among the 4,072 statewide general elections in the 13-year period between 2000 and 2012—that is, a probability of 1-in-185.

In other words, the probability of a disputed presidential election conducted using the current state-by-state winner-take-all system is dramatically higher than the probability of a recount in an election in which there is a single pool of votes and in which the winner is the candidate who receives the most popular votes.

Recounts would be far less likely under the National Popular Vote bill than under the current system because there would be a single large national pool of votes instead of 51 separate pools. Given the 1-in-185 chance of a recount and given that there is a presidential election every four years, one would expect a recount about once in 740 years under a National Popular Vote system. In fact, the probability of a close national election would be even less than 1-in-185 because the 1-in-185 statistic is based on statewide recounts, and recounts become less likely with larger pools of votes. Thus, the probability of a national recount would be even less than 1-in-185 (and even less frequent than once in 740 years).

Many people do not realize how rare recounts are in actual practice, how few votes are changed by recounts, and how few recounts ever change the outcome of an election.

The average change in the margin of victory as a result of a statewide recount is a mere 294 votes.

Recounts are discussed in considerable additional detail in our book *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* (available for reading or downloading for free at www.NationalPopularVote.com).

Also, see our short video on recounts at <https://www.youtube.com/watch?v=z8FwrXRmGA4>.

7. Voter Fraud

Hans von Spakovsky has stated that a nationwide election of the President would

“encourage voter fraud since every bogus vote could make the difference in changing the outcome of a national race.”

Executing electoral fraud without detection requires a situation in which altering a very small number of votes can have a very large impact.

Under the current state-by-state winner-take-all system, a small number of people in a closely divided battleground state can affect enough popular votes to flip all of that state’s electoral votes and, hence, the national outcome.

A mere 537 popular votes in Florida in 2000 determined 25 electoral votes and thereby decided the national winner in an election in which 105,000,000 votes were cast.

A shift of 1,710 votes in California would have switched all of California’s electoral votes and thereby defeated President Wilson in 1916, despite his nationwide lead of 579,000 votes. It is easier to flip 1,710 votes than 579,000 votes.

As former Colorado Congressman and presidential candidate Tom Tancredo (R) has said,

“The issue of voter fraud ... won't entirely go away with the National Popular Vote plan, but it is harder to mobilize massive voter fraud on the national level without getting caught, than it is to do so in a few key states. Voter fraud is already a problem. The National Popular Vote makes it a smaller one.”²

² Tancredo, Tom. Should every vote count? November 11, 2011. <http://www.wnd.com/index.php?pageId=366929>.

In summary, the outcome of a presidential election is less likely to be affected by fraud with a single large nationwide pool of votes than under the current state-by-state winner-take-all system.

See our video on voter fraud at <https://www.youtube.com/watch?v=4DdeFNCvVW0>.

8. Presidents elected with small vote percentages

Hans von Spakovsky has stated:

“since the winner under the NPV is whatever candidate gets the most votes, ... this could lead to presidents elected with very small pluralities.”

In fact, the current system of electing the President doesn't require that a candidate receive a majority of a state's popular vote in order to win all of the state's electoral votes. Even states with majority-vote requirements for other offices (such as Georgia and Louisiana) do not have such a requirement for President.

Moreover, the current system does not, of course, require that a candidate receive a majority of the nationwide popular vote.

In fact, 18 of our 57 presidential elections have been won by a candidate who did not receive a majority of the popular vote nationwide, including Presidents

- Lincoln (1860), who received 39% of the national popular vote,
- John Quincy Adams, who failed to receive the most popular votes nationwide,
- Hayes, who failed to receive the most popular votes nationwide,
- Benjamin Harrison, who failed to receive the most popular votes nationwide,
- George W. Bush (2000), who failed to receive the most popular votes nationwide,
- Polk,
- Taylor,
- Buchanan,
- Garfield,
- Cleveland,
- Wilson (1912 and 1916)m
- Truman,
- Kennedy,
- Nixon (1968), and
- Clinton (1992 and 1996).

As a practical matter, there is plenty of real-world evidence that candidates do not win elective office with small vote percentages in elections in which the winner is the candidate receiving the most popular votes. For example, of the 1,027 winning candidates for state chief executive (governor) since World War II and 2015,

- 88% got over 50% of the popular vote;
- 98% got over 45% of the popular vote;
- 99% got over 40% of the popular vote; and
- 100% got over 35% of the popular vote.

Similarly, there is no history of candidates winning U.S. Senate or congressional elections with very small vote percentages (even though most states do not have explicit majority-vote requirements and run-offs, as Georgia and Louisiana do).

Moreover, there is no reason to expect a breakdown of the two-party system. Four states elected their governors by popular vote when the Constitution took effect in 1789. Since then, all states have adopted popular election of their chief executive. After over 5,000 gubernatorial elections in which the winner was the candidate receiving the most popular votes, the two-party system has yet to break down in elections for chief executive. In fact, Duverger's law (which is based on a worldwide study of elections) asserts that the two-party system is, in fact, sustained when plurality voting is used to fill an office. Plurality voting is the method used throughout the United States today for virtually every election other than President, and the method used in the National Popular Vote bill.

See our video 'Myths about 15% Presidents, Regional and Extremist Candidates, and Break-Down of the Two-Party System' at https://www.youtube.com/watch?v=X_IUIaf9egA

9. Radicalize American politics

Hans von Spakovsky has stated that a nationwide election of the President
“could radicalize American politics.”

If an Electoral College type of arrangement were essential for avoiding extremist candidates, we would see evidence of extremism in elections (such as gubernatorial elections) that do not employ this kind of arrangement. In fact, there is no history of extremist governors, senators, and congressmen chosen in elections in which the winner is the candidate receiving the most popular votes.

See our video 'Myths about 15% Presidents, Regional and Extremist Candidates, and Break-Down of the Two-Party System' at https://www.youtube.com/watch?v=X_IUIaf9egA

10. Constitutionality

Hans von Spakovsky has questioned the constitutionality of the National Popular Vote bill.

The Constitution leaves it to each state to choose the method of selecting its own presidential electors. Article II states:

“Each State shall appoint, **in such Manner as the Legislature thereof may direct**, a Number of Electors....”

48 states currently have so-called “winner-take-all” laws that award *all* of the state's presidential electors to the candidate receiving the most popular votes inside each *separate* state.

These “winner-take-all” laws are state laws. They are *not* part of the U.S. Constitution. They were never debated by the Constitutional Convention. They were never mentioned in the *Federalist Papers*.

Only three states enacted winner-take-all laws for our nation's first presidential election in 1789, and all repealed them by 1800.

After 10 states had adopted winner-take-all laws, Missouri Senator Thomas Hart Benton warned in an 1824 Senate speech:

“The general ticket system [winner-take-all], now existing in 10 States was ... not [the offspring] of any disposition to give fair play to the will of the people. **It was adopted by the leading men of those states, to enable them to consolidate the vote of the State.**”

The National Popular Vote bill is state legislation that would replace existing state winner-take-all laws with a new law guaranteeing the Presidency to the candidate receiving the most popular votes in all 50 states (and DC).

Some defenders of existing state winner-take-all laws have argued that the National Popular Vote might be unconstitutional because it is state legislation, as opposed to a federal constitutional amendment—overlooking the fact that existing winner-take-all laws were not enacted as a federal constitutional amendment, but, instead, as state legislation in exactly the way specified in the Constitution.

State winner-take-all laws can be changed or repealed in the same way that they were originally enacted—namely by passing a different state law.

The 10th Amendment independently addresses the question of whether the states are prohibited from exercising a particular power when the Constitution contains no specific prohibition against it. That is, the 10th Amendment addresses the question of whether there are *implicit* restrictions on the states as to allowable methods for appointing presidential electors.

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Section 1 of Article II of the Constitution contains only one restriction on state choices on the manner of appointing their presidential electors, namely that no state may appoint a member of Congress or federal appointees as presidential elector.

The 10th Amendment was ratified in 1791 (that is, *after* ratification of the original 1787 Constitution) and thus takes precedence over the original Constitution. Even if there were enforceable implicit restrictions in the original Constitution on state choices on the manner of appointing their presidential electors (perhaps in the form of penumbral emanations from section 1 of Article II), such implicit restrictions were extinguished in 1791 by the 10th Amendment.

See our video “Myths about Constitutionality” at https://www.youtube.com/watch?v=ubIeQ-uO_b0

11. Congressional Consent

Hans von Spakovsky has raised the issue of whether the National Popular Vote interstate compact can go into effect without congressional consent.

An interstate compact is a type of law authorized by the U.S. Constitution that enables sovereign states to enter into legally enforceable contractual obligations with one another. The Constitution authorizes states to enter into interstate compacts. The Constitution contains no subject matter limitation on compacts.

If congressional consent turns out to be required for a given interstate compact, the U.S. Supreme Court has ruled that such consent may be given *before or after* the requisite number or combination of states have approved the compact. The Court said in *Virginia v. Tennessee* (148 U.S. 503):

“The constitution does not state when the consent of congress shall be given, **whether it shall precede or may follow** the compact made, or whether it shall be express or may be implied.”

Except for the relatively few interstate compacts initiated by Congress itself or the small number of compacts to which Congress has given advance consent, Congress has historically only voted on a compact after it has been enacted by the requisite number or combination of states specified in the compact (and often not even then).

Concerning the question as to whether Congressional consent is required for a particular compact, the U.S. Supreme Court ruled in 1893 (*Virginia v. Tennessee*, 148 U.S. 503) and 1976 (*New Hampshire v. Maine*, 426 U.S. 363) and 1978 (*U.S. Steel Corporation v. Multistate Tax Commission*, 434 U.S. 452) that congressional consent is only required for interstate compacts that

“encroach upon or interfere with the just supremacy of the United States.”

In the case of the National Popular Vote compact, the Constitution empowers each state to choose the method of appointing its presidential electors. Article II states:

“Each State shall appoint, **in such Manner as the Legislature thereof may direct**, a Number of Electors....”

In the 1893 case of *McPherson v. Blacker* (146 U.S. 1), the U.S. Supreme Court ruled that

“The appointment and mode of appointment of electors belong *exclusively* to the states.”

That is, there simply is no federal power—much less federal supremacy—because the choice of method of appointing its own presidential electors is *exclusively* a state power.

The absence of federal power concerning the choice of method of awarding electoral votes becomes especially clear if one compares Article II giving the states *exclusive* power over presidential elections (quoted above) with the parallel constitutional provision in Article I giving states *primary*—but not *exclusive*—power over congressional elections. Article I states:

“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; **but the Congress may at any time by Law make or alter such Regulations.**”

Some defenders of the existing state-by-state winner-take-all method of awarding electoral votes have made the argument that the federal government has an “interest” in the National Popular Vote compact. However, even if there were some arguable “federal interest” in the states’ exercise of one of their exclusive powers, the U.S. Supreme Court has specifically cautioned (*U.S. Steel Corporation v. Multistate Tax Commission*, 434 U.S. 452):

“The dissent appears to confuse potential impact on ‘federal interests’ with threats to ‘federal supremacy.’”

The U.S. Supreme Court then said:

“Absent a threat of encroachment or interference through enhanced state power, **the existence of a federal interest is irrelevant.** Indeed, every state cooperative action touching interstate or foreign commerce implicates some federal interest. Were that the test under the Compact Clause, virtually all interstate agreements and reciprocal legislation would require congressional approval.”

Some defenders of the current system have argued that the U.S. Supreme Court has been wrong on this issue since the 19th Century and have said that they intend to litigate the National Popular Vote compact after it is enacted by states possessing a majority of the electoral votes—presumably in a lawsuit among the states under the original jurisdiction of the U.S. Supreme Court.

If the U.S. Supreme Court applies its long-standing precedents, it will decide that the National Popular Vote compact may take effect without congressional consent.

Of course, if the Supreme Court decides that the National Popular Vote compact requires congressional consent, the compact would not take effect until subsequently approved by Congress.

In this event, consideration of the compact by Congress would then occur at a moment when states representing a majority of the Electoral College had already enacted the compact and in a political environment where about 75% of the public favors election of the President on the basis of which candidate receives the most popular votes in all 50 states and DC.

See our video “Myths about Interstate Compacts and Congressional Consent” at <https://www.youtube.com/watch?v=1fPQfe0dkP8>

12. Position of majority of Americans

A survey of 819 Georgia voters conducted on January 27-28, 2015, showed 74% overall support for the idea that the President of the United States should be the candidate who receives the most popular votes in all 50 states. Voters were asked

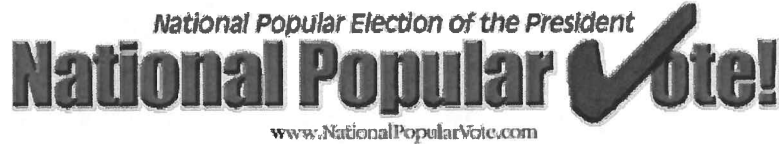
“How do you think we should elect the President: Should it be the candidate who gets the most votes in all 50 states, or the current Electoral College system?”

By political affiliation, support for a national popular vote for President was 75% among Republicans, 78% among Democrats, and 67% among others. By gender, support was 80% among women and 68% among men. By age, support was 68% among 18-29 year olds, 77% among 30-45 year olds, 74% among 46-65 year olds, and 76% for those older than 65. By race, support was 77% among whites, 71% among African-Americans, and 67% among others (representing 7% of all respondents). The survey was conducted by Public Policy Polling, and has a margin of error of plus or minus 3½%. The poll may be found at <http://www.nationalpopularvote.com/sites/default/files/georgia-results-jan-2015.pdf>.

Similar polls in other states have produced similarly high percentages of public support for the idea that the President of the United States should be the candidate who receives the most popular votes in all 50 states.

Additional Information about National Popular Vote

Additional information is in our book *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* (available for reading or downloading for free at www.NationalPopularVote.com).



Advice to Speakers on the National Popular Vote Bill

June 6, 2018— Version 76

This memo provides advice to those talking to legislators, speaking before groups, doing media interviews, testifying at hearings, or debating the National Popular Vote bill.

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Start with a One-Sentence Statement of the Proposal's Deliverable Benefit

Extensive research and experience over the years shows that many people who harbor negative knee-jerk reactions to the National Popular Vote proposal simultaneously agree that “the candidate receiving the most popular votes should win.” Thus, we strongly recommend starting every meeting or presentation with a clear one-sentence statement of the **deliverable benefit** of the National Popular Vote bill at the start, middle, and end of your meeting or presentation.

“The National Popular Vote bill would guarantee the Presidency to the candidate who receives the most popular votes in all 50 states (and the District of Columbia).”

Avoid Erroneous and Gratuitously Offensive Attacks on the “Electoral College”

Do Not Say that the Bill Abolishes or Somehow Sidesteps the Electoral College

The Electoral College (namely the 538 presidential electors who meet in mid-December to elect the President) will continue to elect the President after the National Popular Vote plan takes effect. Thus, it is factually false to say that the National Popular Vote bill abolishes or somehow sidesteps the Electoral College. Saying this immediately undercuts your authority as a speaker.

Aside from being untrue, this statement is also politically counter-productive because it gratuitously offends many institutionally conservative people who view the Electoral College in an almost reverential way. These institutionally conservative people (some Democrats and many Republicans) reverentially associate this term with the Founding Fathers, our country's Constitution, and history. This reverence is based on the incorrect belief that the way we currently elect the President was designed by the Founding Fathers at the Constitutional Convention.

The facts are that the National Popular Vote bill is *state* legislation that would repeal current *state* winner-take-all laws. It would replace these state winner-take-all laws with a law that would guarantee the Presidency to the national popular-vote winner. Talking about the Electoral College focuses attention on the level of the federal Constitution (which is not changed by the National Popular Vote bill).

Don't Blame the Electoral College for the Shortcomings of the “Current System”

Don't say that the “Electoral College allows second-place candidates to become President.”

One reason not to blame the “Electoral College” is that it is factually false. The National Popular Vote plan will indeed prevent second-place candidates from becoming President; however, the Electoral College will continue to exist and operate after the National Popular Vote plan takes effect.

A second reason is that it is politically counter-productive to gratuitously attack an institution that many institutionally conservative people revere.

Instead, please use the term “the current system” — not “the Electoral College.” Please say something like “The current system of electing the President allows second-place candidates to become President” or “because of current state winner-take-all laws, second-place candidates can become President.”

The simplest way to avoid mistakes in this area is to simply forget you ever heard the term “Electoral College.”

Always Use the Adjective “Popular” or “Electoral” When Talking about “Votes”

You will quickly confuse the listener if you use the unmodified word “votes” with two entirely different meanings in the same breath. For example, the sentence below becomes very confusing if the adjectives are removed.

“Under the National Popular Vote bill, all the [electoral] votes from the enacting states will be awarded to the presidential candidate receiving the most [popular] votes in all 50 states (and DC).”

Own the Constitution and Founding Fathers and Mention Them Early and Often

We need to own the Constitution and Founding Fathers during any discussion of the National Popular Vote bill. Mention them early and often.

Many people harbor the notion that the method of electing the President is fully specified in the U.S. Constitution. This fundamental misconception leads to the incorrect conclusion that changing the system of electing the President requires a federal constitutional amendment (and, therefore, state legislation, such as the National Popular Vote bill, is unconstitutional).

The Electoral College (namely the 538 presidential electors who meet in mid-December and actually elect the President) *is* in the Constitution. However, the method of choosing the members of the Electoral College *is not* in the U.S. Constitution. Instead, each state legislature has the “exclusive” and “plenary” power (to use the words of the U.S. Supreme Court) to choose the method for deciding how to pick its members of the Electoral College (that is, the state’s presidential electors). The quickest, easiest, and most persuasive way to make this point is simply to quote the 17 relevant words from Article II, Section 1 of the Constitution:

“Each State shall appoint, **in such Manner as the Legislature thereof may direct**, a Number of Electors....”

Forty-eight states (all except Maine and Nebraska) currently have so-called “winner-take-all” laws. These laws award all of a state’s electoral votes to the candidate who receives the most popular votes (a plurality) in the state.

When the National Popular Vote bill takes effect, it replaces the state’s current “winner-take-all” laws in the enacting states. The bill awards the electoral votes of the enacting states to the presidential candidate who receives the most popular votes in all 50 states (and DC).

The following statements make the point that the current system of awarding electoral votes on a winner-take-all basis was *not* designed or created (much less endorsed) by the Founding Fathers at the Constitutional Convention.

“The state-by-state winner-take-all method of awarding electoral votes is not in the Constitution. It was not debated by the Constitutional Convention or mentioned in the *Federalist Papers*. It was used by only 3 states in the nation’s first presidential election in 1789, and all three repealed it by 1800.”

“It was not until 1828 — long after the 1787 Constitutional Convention — that a majority of the states had adopted the winner-take-all method of awarding electoral votes.”

“It was not until 1880 that all the states used the winner-take-all method.”

“Maine’s legislature changed to the district system of awarding electoral votes in 1969 and Nebraska’s did so in 1992 — a reminder that it is not necessary to amend the U.S. Constitution to change the way that states award their electoral votes and the President is elected.”

“State winner-take-all laws were adopted by state-by-state legislative action—not a federal constitutional amendment. Therefore, these state laws may be repealed in the same way they were adopted, namely by state legislative action.”

Never Refer to the Electoral College as “Antiquated”

This word suggests to many listeners that you are being disrespectful or dismissive of the Founding Fathers at the Constitutional Convention. In fact, the Founding Fathers at the Constitutional Convention had nothing to do with the establishment of the winner-take-all method of awarding electoral votes. “Antiquated” also suggests that you are advocating ignoring the Constitution.

Do Not Use Expediency to Justify the Bill

It is true that a federal constitutional amendment would be harder to pass than changing state statutes. However, state legislative action, in the form of the National Popular Vote bill, is **the right way** to change the method of awarding electoral votes, because changing state statutes is the way specifically provided in the Constitution and it is the way by which existing winner-take-all laws came into existence in the first place. No one argued that the a federal constitutional amendment was required to install winner-take-all when the states did so in the pre-Civil-War era (long after almost all of the Founding Fathers were dead).

Always Challenge Vague Suggestions of Unconstitutionality by Opponents

Although our informed opponents know that the winner-take-all method of awarding electoral votes is **not** in the Constitution and although most of them usually concede the National Popular Vote bill is constitutional, they often still try to create confusion by implying that the current method of electing the President was designed, created, or endorsed by the Founding Fathers at the Constitutional Convention.

Do not allow a vague (or specific) suggestion of unconstitutionality to go unchallenged. If this happens, ask the person raising a claim of unconstitutionality to recite the **specific clause** of the Constitution that they think is being violated. In practice, opponents will be unable to quote any section of the Constitution or there is a clear explanation as to why they are mistaken.

Explain the Cause of the Problem Before Describing the Remedy

Do not launch into a discussion of shortcomings of the current system without first explaining the root cause of the problem, namely **state** winner-take-all laws.

Most people have not thought about the Electoral College since high school. Without understanding the state-by-state winner-take-all method of awarding electoral votes, people cannot understand why presidential candidates ignore four-fifths of the states or how a second-place candidate can become President. Here’s something to say:

“The shortcomings of the current system stem from state winner-take-all statutes that award all of a state’s electoral votes to the candidate who receives the most popular votes in each state.”

“The National Popular Vote bill would change the method of choosing members of the Electoral College so as to guarantee that the Electoral College reflects the choice of the people in all 50 states (and DC).

Emphasize the Shortcomings of the Current System

After explaining the root cause of the shortcomings of the current system of electing the president (namely state winner-take-all laws), it’s time to address the shortcomings.

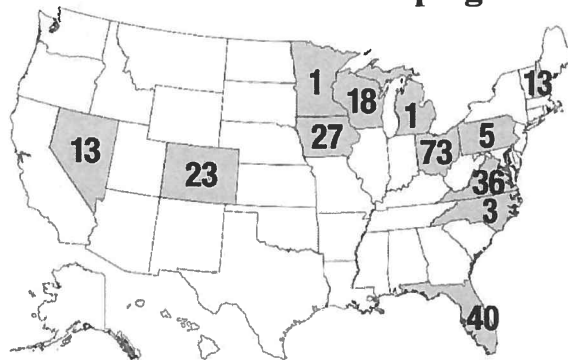
“The current system of electing the President enables a candidate to win the White House without getting the most popular votes in all 50 states and causes presidential candidates to ignore three-quarters of the states in the general-election campaign for President.”

Emphasize that Three-Quarters of the States Are Politically Irrelevant in Presidential Elections

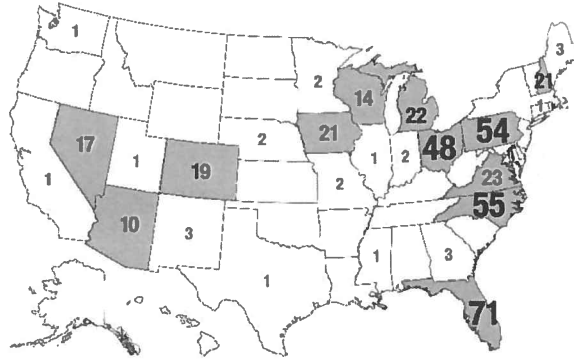
“Another shortcoming of state winner-take-all statutes is that presidential candidates have no reason to pay attention to the concerns of voters in states where they are comfortably ahead or hopelessly behind. In 2012, all of the general-election campaign events (and virtually all the advertising and organizing) were in just 12 closely divided “battleground” states. In 2016, 94% of the general-election campaign events were in 12 states. Candidates do not pay attention to the concerns of voters in the states where they are safely ahead or hopelessly behind, because they have nothing to win or lose by campaigning in those states. After the election, sitting Presidents (either contemplating their own re-election or working for the election of their preferred successor) make numerous policy decisions in favor of the battleground states.”

Although many people are aware of the existence of “battleground” states and “spectator” states, few people are aware of the extreme degree to which presidential campaigns are concentrated into a handful of closely divided battleground states.

2012 General-Election Campaign Events



2016 General-Election Campaign Events



As can be seen, three-quarters of the states are politically irrelevant in presidential elections.

“The National Popular Vote bill will guarantee that the presidential candidate with the most popular votes will win; that *every* voter in *every* state will be politically relevant in *every* presidential campaign.”

Emphasize that Five out of 45 Presidents Did Not Win the National Popular Vote

“Because of state winner-take-all statutes, five of our 45 Presidents have come into office without having won the most popular votes in the country as a whole, thereby undermining a President’s legitimacy and ability to lead.”

When mentioning the 5 “second-place” elections, always **mention the “5” in tandem with the “45.”** The United States has been in existence for over 200 years, and “5” events in 200 years may sound small, whereas “5 out of 45 Presidents” or “5 out of 58 presidential elections” does not sound so small.

“The second-place candidate has become President in 5 of our 58 presidential elections—a failure rate of about 1 in 12.”

Mention the Frequency of “Near Miss” Elections

In 2004, a shift of 59,393 votes in Ohio would have defeated President George W. Bush despite his nationwide lead of over 3,000,000 votes. The national popular vote winner would also have been defeated by a shift of 9,246 votes in 1976, a shift of 77,726 in 1968, a shift of 9,212 in 1960, a shift of 20,360 in 1948, and a shift of 1,711 votes in 1916. That's 6 cases in less than a century.

Do Not Gratuitously Concede that Second-Place Elections are Rare

A failure rate of 1 in 12 is bad enough. However, half of American presidential elections have been popular-vote landslides (i.e., a popular-vote margin of greater than 10%). Thus, the **failure rate is actually about 1 in 6** among the non-landslide elections.

Note that all of the 8 presidential elections between 1988 and 2016 have been non-landslide elections, so we are in an *era of close elections*.

Avoid Confusion by Describing the Bill Completely

Be Sure to Cover Both Key Parts of the Bill

Two distinct thoughts are necessary to describe the National Popular Vote bill correctly.

“The National Popular Vote bill will take effect when enacted by states possessing a majority of the electoral votes — that is, enough electoral votes to elect a President (270 of 538).”

“Under the National Popular Vote bill, all the electoral votes from the enacting states will be awarded to the presidential candidate who received the most popular votes in all 50 states (and DC).”

“Thus, the candidate receiving the most popular votes in all 50 states (and DC) will be elected President when the Electoral College meets in mid-December.”

Note that it is essential to mention **both** of these key thoughts together — the 270-electoral-vote trigger and the awarding of electoral votes. **Do not omit mentioning the 270-vote trigger.** If you fail to link these 2 key thoughts immediately in the listener’s mind, the listener may start to think that his or her state is being asked to unilaterally give away its voice. Unilaterally giving away a state’s electoral votes to the 50-state winner makes no sense in the absence of the corresponding commitment by other states to deliver a benefit to the listener’s own state. The benefit is that the President will always be the candidate receiving the most popular votes in all 50 states (and DC).

Say “All 50 States”—Not “Nationwide”

“All 50 states” are the most important words in describing the bill.

We know from experience in speaking to legislators, the media, the public, and focus groups that ambiguous alternative phrases like “nationwide” or “across the country” predictably create confusion because they carry the connotation (to many listeners) of “scattered” and “selected” places around the country as opposed to “all 50 states.” Southwest Airlines flies nationwide; however, it does not fly to **all 50 states**. The reason that this confusion is damaging is that there are two distinct, but easily confused, groups of states that play a role in our legislation.

- (a) a smaller group of states (roughly 25) that are necessary to bring the compact into effect (that is, states possessing 270 or more of the 538 electoral votes), and
- (b) the larger group (“all 50 states and the District of Columbia”) whose popular votes will be added together to determine which candidate wins the Presidency.

Mentioning “all 50 states” is especially important because people can easily slip into the **misconception that our plan would only count the popular votes from the 25-or-so states that actually enact the bill**. If the listener gets that incorrect impression, they will (quite reasonably) conclude that the plan makes no sense at all and would produce bizarre results.

Once a listener becomes confused on this point, it is extraordinarily difficult to undo this confusion. You can tell if people are suffering from this confusion if they ask questions such as “Wouldn’t the presidential candidates just campaign in the states that enact the compact?” or “What would be the likely political complexion of the states enacting the compact?” In fact, it does not matter what combination of states enact the compact. The above types of questions are a tip-off that the person is thinking that the compact awards its bloc of electoral votes to the winner of the popular vote **inside** the compacting states—while excluding the popular vote from the states that did not enact the compact. If someone asks either of these two questions, do not try to answer their question. Instead, start over (saying “I may not have explained this correctly”) and then re-explain how the National Popular Vote bill works so that the listener correctly understands the bill. In that way, the listener will understand that the political complexion of the compacting states doesn’t matter, and therefore that presidential candidates would necessarily campaign in all 50 states.

It is important for the listener to have an “aha” moment concerning this bill. Reaching the “aha” moment requires the listener to combine 2 distinct thoughts—so that the listener realizes that the compacting states will collectively award a bloc of 270 or more electoral votes to the winner of the popular vote in all 50 states. You can usually tell when the listener “gets it” by their reaction. If you don’t see that reaction, it is important to re-explain the bill before proceeding because otherwise the listener may start asking a lot of questions premised on a misunderstanding.

Say that Electoral Votes Are “Awarded” — Never “Pledged” or “Instructed” or “Bound”

It is important to talk about a state’s electoral votes being “**awarded**”—as opposed to using inaccurate words such as “instructed” or “pledged.”

Talking about “instructing” or “pledging” or “binding” creates confusion in several ways.

First, it is factually incorrect. Nobody is “instructed” or “pledged” as a result of the National Popular Vote bill. The bill *controls* the election of presidential electors. The bill specifies that the state’s chief election officer will certify the election, in his state, of the slate of presidential electors who were nominated by the political party of the candidate who received the most popular votes in all 50 states (and DC). In this regard, the National Popular Vote bill operates in the same way as the current system. Many people incorrectly think that the Electoral College consists of “wise men” who actually deliberate in mid-December and decide who the President will be. The important point is that neither the current system nor our bill relies on the graciousness of supporters of one political party to execute “instructions” to vote for the candidate of the opposing political party. Instead, both the current system and our bill rely on willing party activists who act as rubberstamps and vote in the Electoral College precisely the way that the voters expect and precisely the way that they personally want to vote. Words such as “instructed” or “pledged” or “bound” open up a rabbit hole and often trigger a time-consuming discussion of faithless electors, leading to a time-consuming explanation of how the current system actually works.

Do Not Use the Acronym “NPV”

Do not use the acronym “NPV.” It means nothing to the average listener. Saving 7 syllables, in the midst of a 5-minute interview or 20-minute meeting is no reason to use this acronym. Using an unfamiliar acronym puts distance between you and the listener (who may be reluctant to ask what you are talking about).

More importantly, we want listeners to remember the 3 words “National Popular Vote,” because these words enable them to easily find our website and get more information (www.NationalPopularVote.com). These three words are our brand.

If giving a radio or TV interview, using the acronym “NPV” in the middle of the interview is especially confusing to a listener who tuned in late and didn’t hear the words “National Popular Vote” at the beginning of the interview.

Avoid Referring to the Bill as an “Interstate Compact”

There is no need to mention that the National Popular Vote bill is an “interstate compact” or a contractual “agreement among the states.” Using “lawyer talk” or “insider speak” puts distance between you and the listener. It is better to use everyday terms such as “bill,” “plan,” “proposal,” or “law,” unless you know that your listener is already familiar with interstate compacts. Another reason is that it is always better to talk about the bill in terms of what “deliverable benefit” it delivers, instead of the mechanics. Our experience is that almost all governors (and many state legislators) are familiar with interstate compacts and therefore understand that a compact is “obviously the way you would do it.” However, most members of Congress and the public are usually unfamiliar with interstate compacts.

Refer to the Numerous Validators of the Bill

Opponents of the National Popular Vote bill usually attempt to convey the impression that the proposal is some kind of fishy, fringe, poorly-constructed, and unvetted “scheme” that has no support and no chance of adoption.

Mention that the Bill Has Been Enacted by 12 States Possessing 172 Electoral Votes

Since National Popular Vote’s initial press conference and release of the first edition of our book in February 2006,

“The National Popular Vote bill has been enacted by 12 jurisdictions possessing 172 of the 270 electoral votes needed to activate it, including four small jurisdictions (Rhode Island, Vermont, Hawaii, and the District of Columbia), four medium-size states (Connecticut, Maryland, Massachusetts, and Washington state), and four big states (New Jersey, Illinois, New York, and California).”

“The National Popular Vote bill will take effect when enacted by states possessing 98 additional electoral votes.

If asked about how many states it would take to reach 270 electoral votes, the answer is that it depends on the number of electoral votes possessed by each enacting state, but that about half the states is a good rough estimate.

By the way, listing the states in three groups (small, medium, and large) reminds people that this change is not something favored by big states or opposed by small states.

Mention that the Bill Has Passed One House in 11 Other States with 89 Electoral Votes

The National Popular Vote bill has passed at least one house in 11 other states with 89 electoral votes (AR, AZ, CO, DE, ME, MI, NC, NM, NV, OK, OR) and been approved by unanimous committee votes in two additional states with 26 electoral votes (GA, MO). It has passed both houses of the legislature in Colorado and New Mexico (but in different years).

It is sometimes helpful to mention the National Popular Vote bill has been passed by 9 legislative chambers in low-population states (i.e., 3 or 4 electoral votes), including both houses in Hawaii, Rhode Island, and Vermont, and one legislative chamber in Maine, Delaware, and the District of Columbia. Note that DC has had 3 electoral votes in the Electoral College since ratification of the 24th Amendment in 1961.

Similarly, as to “battleground” states, the bill passed the Michigan House with over a third of House Republicans (19 of 52); one house in Nevada and New Mexico (when it was a battleground state); and both houses in Colorado (but in different years).

Mention that the Bill Has Been Endorsed by 3,125 State Legislators in all 50 states

The bill has been endorsed by 3,125 state legislators from all 50 states —either as sponsors (about half of this number) or legislators who have cast recorded votes in favor of the bill on the floor or in committee.

Mention that the Nationwide Election of the President Has Long Had Bi-Partisan Support

The “early adopter” states of the National Popular Vote bill were Democratic-controlled states, except for New York where the bill passed the Republican-controlled Senate but was initially blocked in the Democratic-controlled Assembly.

The National Popular Vote bill has been endorsed by the Conservative Party of New York.

In addition to mentioning the bipartisan 21–14 vote in the Connecticut Senate, the 40–16 vote in the Arizona House, the 28–18 vote in the Oklahoma Senate, the 57–4 vote in the New York

Senate, and the 30–4 vote in the Rhode Island Senate, National Popular Vote’s Advisory Board has included former Senators Birch Bayh (D–Indiana), David Durenberger (R–Minnesota), Jake Garn (R–Utah), and the late John Anderson (R–Illinois) and former congressmen John Buchanan (R–Alabama—the first Republican elected to represent Birmingham), Tom Campbell (R–California), and Tom Downey (D–New York). Other supporters include former House Speaker Newt Gingrich (R–GA), former Governors Jim Edgar (R–IL) and Howard Dean (D–VT), the late Senator Fred Thompson (R–TN), former Congressman Tom Tancredo (R–CO), and former RNC Chair Michael Steele.

Presidents Nixon, Carter, and Ford endorsed the concept of nationwide popular election of the President, as did former Congressman and later-President George H. W. Bush of Texas and former Senator Robert Dole of Kansas (national ticket nominee in 1976 and 1996).

Appendix S of the book, *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* lists at least one sponsor in the U.S. House or Senate for the concept of nationwide popular election of the President from all 50 states over a period of decades.

Refer to Our Book *Every Vote Equal*

Mentioning our book conveys the message that substantial research and thought has gone into the National Popular Vote bill. Our book *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* contains a more detailed discussion of the shortcomings of the current system.

We routinely give away our book to state officials and staff. The book may be read or downloaded for free from our website at www.NationalPopularVote.com. The book costs \$4.93 to print (and, therefore, falls well under any state’s gift limits). The book may be purchased from Amazon for \$4.95.

Topics to Avoid

Do Not Gratuitously Bring Up Presidential Primaries and the Nominating Process

We have found that it is confusing and distracting to bring up presidential primaries and the nominating process. The National Popular Vote bill is solely about the general-election campaign for President.

Do Not Gratuitously Bring Up Federal Constitutional Amendments

It is time-wasting, confusing, and politically divisive to bring up federal constitutional amendments to achieve the goal of a nationwide election of the President. About half of the current Republican state legislative sponsors of our bill would *not* support a federal constitutional amendment for nationwide election of the President, because they prefer a *state-based* solution to the problem.

If federal constitutional amendments come up, just say that the U.S. Constitution already contains a built-in mechanism for changing the way the President is elected, because it empowers state legislatures to choose the method of awarding their electoral votes.

The U.S. Constitution (Article II, Section 1) gives states exclusive control over awarding their electoral votes:

“Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors....”

Using the Constitution’s existing method is *the right way* to make this change.

Avoid or Minimize the Use of Off-Message Arguments about Small States

It is usually best to avoid superficial arguments such as “Wyoming has three times the voting power of California.”

In fact, the 12 smallest states are the most disadvantaged and ignored group of states under the current state-by-state winner-take-all method of awarding electoral votes. The reason is that political power in presidential elections flows from being a closely divided battleground state—not from a mathematical calculation dividing a state’s number of electoral votes by its population. The 12 smallest states are not ignored because they are small, but because they are one-party states in presidential elections. In fact, Wyoming and California have equal voting power in electing the President, namely zero.

The political irrelevance of the 12 smallest states under the *current* system becomes especially clear if you notice that these states together have the same population—about 12 million—as the closely divided battleground state of Ohio. These 12 small states have 40 electoral votes—more than twice Ohio’s 18 electoral votes. However, Ohio received 73 of the nation’s 253 post-convention campaign events in 2012, while these 12 small states received none.

Tellingly, the National Popular Vote bill has already been enacted by four small states (Rhode Island, Vermont, Hawaii, and DC) and passed one legislative chamber in Maine and Delaware. When the issue is fully debated, legislators in small states realize the incorrectness of the argument that the current system somehow benefits the small states. Thus, the argument about small states not only does not reflect political reality, but makes enactment of the National Popular Vote bill somewhat more difficult in small states.

Also, if it is claimed that the small states are Republican, be sure to correct that incorrect statement. In the last seven presidential elections, 6 of the smallest states have almost always gone Republican (Alaska, Idaho, Montana, North Dakota, South Dakota, and Wyoming), while 6 other small jurisdictions have regularly gone Democratic (Delaware, the District of Columbia, Hawaii, Maine, Rhode Island, and Vermont). The remaining state with 4 or less electoral votes (New Hampshire) is a closely divided battleground state. It has gone Democratic in 6 of the last 7 elections. Thus, the small states are tied as to partisan orientation in presidential election (and, if anything, are slightly Democratic).

Remember that the Bill Handles Many “Scary Scenarios” Better than the Current System

Many of the arguments raised against the National Popular Vote bill involve hypothetical and unlikely “scary scenarios.” It turns out that the National Popular Vote bill handles many of these “scary scenarios” in a way that is **equal to or superior to the current system** (e.g., faithless electors, recounts). Numerous examples can be found in chapter 9 (the “myths” chapter) of the book *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*. So, before going down one of these rabbit holes, ask yourself whether the National Popular Vote bill is, in fact, “equal or superior” to the current system.

Always Get Your Important Points in Early

Time management is very important. Always get the important points in early—especially in a meeting with a busy legislator (which may get interrupted at any time) or a media interview (where a minor question may use up so much time that you never get to your important points).

Yank the Discussion Back to the Benefits and Values of the Bill

It is often desirable to yank the discussion back to the basic values and benefits of our proposal (especially after discussing some minor technical issue.

- The current system causes voters in three-quarters of the states to be ignored.
- The National Popular Vote bill will guarantee that *every* voter in *every* state will be politically relevant in *every* presidential campaign.
- The current system allows a second-place candidate to win the Presidency.
- The National Popular Vote bill will make every American's vote equal.



"Agreement Among the States to Elect the President by National Popular Vote"

June 6, 2018

Enacted into Law in 12 States with 172 Electoral Votes

The National Popular Vote interstate compact has been enacted into law by 12 jurisdictions possessing 172 electoral votes — 98 votes short of the 270 electoral votes needed to activate it.

- Connecticut – 7
- District of Columbia – 3
- Hawaii – 4
- Illinois – 20
- Maryland – 10
- Massachusetts – 11
- New Jersey – 14
- Washington – 12
- Vermont – 3
- California – 55
- Rhode Island – 4
- New York – 29

Passed 13 Additional Chambers in 11 States with 89 Electoral Votes

- Arizona House
- Arkansas House
- Colorado House
- Colorado Senate
- Delaware House
- Maine Senate
- Michigan House
- Nevada Assembly
- New Mexico House
- New Mexico Senate
- North Carolina Senate
- Oklahoma Senate
- Oregon House

Unanimously Passed Committee in 2 States

- Georgia House committee
- Missouri House committee

Agreement Among the States to Elect the President by National Popular Vote (888 Words)

Article I—Membership

Any State of the United States and the District of Columbia may become a member of this agreement by enacting this agreement.

Article II—Right of the People in Member States to Vote for President and Vice President

Each member state shall conduct a statewide popular election for President and Vice President of the United States.

Article III—Manner of Appointing Presidential Electors in Member States

Prior to the time set by law for the meeting and voting by the presidential electors, the chief election official of each member state shall determine the number of votes for each presidential slate in each State of the United States and in the District of Columbia in which votes have been cast in a statewide popular election and shall add such votes together to produce a “national popular vote total” for each presidential slate.

The chief election official of each member state shall designate the presidential slate with the largest national popular vote total as the “national popular vote winner.”

The presidential elector certifying official of each member state shall certify the appointment in that official’s own state of the elector slate nominated in that state in association with the national popular vote winner.

At least six days before the day fixed by law for the meeting and voting by the presidential electors, each member state shall make a final determination of the number of popular votes cast in the state for each presidential slate and shall communicate an official statement of such determination within 24 hours to the chief election official of each other member state.

The chief election official of each member state shall treat as conclusive an official statement containing the number of popular votes in a state for each presidential slate made by the day established by federal law for making a state’s final determination conclusive as to the counting of electoral votes by Congress.

In event of a tie for the national popular vote winner, the presidential elector certifying official of each member state shall certify the appointment of the elector slate nominated in association with the presidential slate receiving the largest number of popular votes within that official’s own state.

If, for any reason, the number of presidential electors nominated in a member state in association with the national popular vote winner is less than or greater than that state’s number of electoral votes, the presidential candidate on the presidential slate that has been designated as the national popular vote winner shall have the power to nominate the presidential electors for that state and that state’s presidential elector certifying official shall certify the appointment of such nominees.

The chief election official of each member state shall immediately release to the public all vote counts or statements of votes as they are determined or obtained.

This article shall govern the appointment of presidential electors in each member state in any year in which this agreement is, on July 20, in effect in states cumulatively possessing a majority of the electoral votes.

Article IV—Other Provisions

This agreement shall take effect when states cumulatively possessing a majority of the electoral votes have enacted this agreement in substantially the same form and the enactments by such states have taken effect in each state.

Any member state may withdraw from this agreement, except that a withdrawal occurring six months or less before the end of a President's term shall not become effective until a President or Vice President shall have been qualified to serve the next term.

The chief executive of each member state shall promptly notify the chief executive of all other states of when this agreement has been enacted and has taken effect in that official's state, when the state has withdrawn from this agreement, and when this agreement takes effect generally.

This agreement shall terminate if the electoral college is abolished.

If any provision of this agreement is held invalid, the remaining provisions shall not be affected.

Article V—Definitions

For purposes of this agreement,

"chief executive" shall mean the Governor of a State of the United States or the Mayor of the District of Columbia;

"elector slate" shall mean a slate of candidates who have been nominated in a state for the position of presidential elector in association with a presidential slate;

"chief election official" shall mean the state official or body that is authorized to certify the total number of popular votes for each presidential slate;

"presidential elector" shall mean an elector for President and Vice President of the United States;

"presidential elector certifying official" shall mean the state official or body that is authorized to certify the appointment of the state's presidential electors;

"presidential slate" shall mean a slate of two persons, the first of whom has been nominated as a candidate for President of the United States and the second of whom has been nominated as a candidate for Vice President of the United States, or any legal successors to such persons, regardless of whether both names appear on the ballot presented to the voter in a particular state;

"state" shall mean a State of the United States and the District of Columbia; and

"statewide popular election" shall mean a general election in which votes are cast for presidential slates by individual voters and counted on a statewide basis.

How the Electoral College Works

- Each political party in each state nominates a slate of candidates for the position of presidential elector. This is most commonly done at the party's congressional-district and state-level convention during the summer of a presidential election year. It is sometimes done in a primary.
- Each political party notifies the state's chief election official of the names of the party's candidate for President and Vice President (nominated at the party's national convention) and the names of the party's candidates for the position of presidential elector.
- Under the "short presidential ballot" (now used in all states), the names of the party's nominee for President and Vice President appear on the ballot that the voter sees on Election Day. The names of the actual presidential electors appear on the ballot in only a few states.
- When a voter casts a vote for a party's presidential and vice-presidential slate on Election Day (the Tuesday after the first Monday in November), that vote is deemed to be a vote for all of that party's candidates for presidential elector.
- Under the "winner-take-all" rule used in 48 states, the presidential-elect candidate who receives the most popular votes statewide is elected. In Maine and Nebraska, the presidential-elect candidate who receives the most popular votes in each congressional district is elected (with the two remaining electors being based on the statewide popular vote).
- Each state's winning presidential electors travel to their State Capitol on the first Monday after the second Wednesday in December to cast their votes for President and Vice President.
- Below is the 1964 Vermont presidential ballot when Vermont voters still had the option of voting for actual presidential and vice-presidential candidates (i.e., the "short presidential ballot") or voting for individual presidential electors.

PRESIDENTIAL ELECTORS

OFFICIAL BALLOT

Town of

WINDSOR

for the

General Election November 3, 1964

Electors of President and Vice-President of the United States

To vote a straight party ticket, make a cross (X) in the square at the head of the party column of your choice.
If you desire to vote for a person whose name is not on the ballot, fill in the name of the candidate of your choice in the blank space provided therefor.

If you do not wish to vote for every person in a party column, make a cross (X) opposite the name of each candidate of your choice; or you may make a cross (X) in the square at the head of the party column of your choice which shall count as a vote for every name in that column, except for any name through which you may draw a line, and except for any name representing a candidate for an office to fill which you have otherwise voted in the manner heretofore prescribed.

REPUBLICAN PARTY		DEMOCRATIC PARTY	
For President		For President	
BARRY M. GOLDWATER of Arizona		LYNDON B. JOHNSON of Texas	
For Vice-President		For Vice-President	
WILLIAM E. MILLER of New York		HUBERT H. HUMPHREY of Minnesota	
<input type="checkbox"/>		<input type="checkbox"/>	
For Electors of President and Vice-President of the United States		For Electors of President and Vice-President of the United States	
Vote for THREE		Vote for THREE	
MABEL STAFFORD, Republican, South Wallingford		MARGARET M. FARMER, Democratic, Burlington	
LEE EMERSON, Republican, Barton		PETER J. HINCKS, Democratic, Middlebury	
OLIN GAY, Republican, Springfield		HAROLD RAYNOLDS, Democratic, Springfield	



From U.S. Constitution

ARTICLE II, SECTION 1, CLAUSE 1

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

ARTICLE II, SECTION 1, CLAUSE 2

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

12TH AMENDMENT (1804)

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;--The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;--The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

August 1, 2017

History of State Winner-Take-All Laws

- Today, 48 states (all except Maine and Nebraska) have a so-called “winner-take-all” law that awards *all* of a state’s electors to the presidential candidate who gets the most popular votes inside each *separate* state.
- These winner-take-all laws are *state* laws—they are *not* part of the U.S. Constitution. The winner-take-all method of choosing presidential electors was never debated by the 1787 Constitutional Convention or mentioned in the *Federalist Papers*.
- Only three states had winner-take-all laws in the first presidential election in 1789, and all three repealed them by 1800. In 1789, electors were chosen from congressional districts in Massachusetts, from special presidential-electors districts in Virginia, and by counties in Delaware. The Governor and his Council appointed the state’s presidential electors in New Jersey. State legislatures appointed presidential electors in the other states.
- In the nation’s first competitive presidential election in 1796, Jefferson lost the Presidency by three electoral votes because presidential electors were chosen by district in the heavily Jeffersonian states of Virginia and North Carolina, and Jefferson lost one district in each state.
- On January 12, 1800, Thomas Jefferson wrote James Monroe (then governor of Virginia):

“On the subject of an election by a general ticket [winner-take-all], or by districts, ... all agree that an election by districts would be best, if it could be general; but **while 10 states choose either by their legislatures or by a general ticket [winner-take-all], it is folly and worse than folly for the other 6 not to do it.**”
- As a result, Virginia quickly passed a winner-take-all law in time for the 1800 election—thereby assuring Jefferson of *all* the state’s electoral votes.
- Meanwhile, the Federalist majority in the legislature of John Adams’s home state of Massachusetts—alarmed by rising support for Jefferson in the state—repealed the state’s district system—thereby assuring John Adams of all the state’s electoral votes in 1800.
- This triggered a domino effect in which each state’s dominant political party adopted winner-take-all so that it could deliver the maximum number of electoral votes to its party’s nominee. Ten states enacted winner-take-all by 1824 when Missouri Senator Thomas Hart Benton said:

“The general ticket system [winner-take-all], now existing in 10 States was ... not [the offspring] of any disposition to give fair play to the will of the people. **It was adopted by the leading men of those states, to enable them to consolidate the vote of the State.**”
- By 1836, all but one state had enacted laws specifying that their state’s voters would vote for presidential electors on a winner-take-all basis. By 1880, all states were using this system.
- In 1888, incumbent Democratic President Cleveland won the national popular vote, but lost the electoral vote. When Democrats won control of the legislature in the then-regularly-Republican state of Michigan in 1890, they replaced winner-take-all with district election of presidential electors. The Republicans challenged the Democrat’s change. In 1892, the U.S. Supreme Court upheld district elections and ruled in *McPherson v. Blacker*:

“The constitution does not provide that the appointment of electors shall be by popular vote, nor that the electors shall be voted for upon a general ticket [i.e., the winner-take-all rule], nor that the majority of those who exercise the elective franchise can alone choose the electors. ... In short, **the appointment and mode of appointment of electors belong exclusively to the states under the constitution of the United States.**”
- The Republicans restored winner-take-all in Michigan as soon as they regained control of the state legislature.
- Maine adopted district elections for its electors in 1969, and Nebraska did so in 1992.
- Massachusetts has changed its method of appointing electors 11 times.

February 24, 2018

Various Proposals for Electing the President

- The ***congressional-district approach*** would retain the existing statewide winner-take-all approach for the state's two senatorial electors; however, it would use a district-level winner-take-all rule for electing the state's remaining presidential electors. This method could be implemented either by state law in an individual state or on a nationwide basis by a federal constitutional amendment. Maine has used this approach since 1969 and Nebraska since 1992. It was used in Michigan in the 1892 election and by numerous states in the nation's early years. See section 3.3, 4.2, and 9.23.1 of *Every Vote Equal* book (www.Every-Vote-Equal.com).

- In the ***fractional proportional approach***, a state's electoral votes would be divided proportionally based on the percentage of votes received in the state by each presidential candidate—*carried out to three decimal places*. Because this approach involves fractions of electoral votes, its implementation would require a federal constitutional amendment. This constitutional amendment was sponsored by Massachusetts Senator Henry Cabot Lodge (R) and Texas Representative Ed Gossett (D) and passed the U.S. Senate by a 64–27 margin in February 1950 (but died in the House). It was later championed by Nevada Senator Cannon (D) in the 1969. See discussion at <http://electionlawblog.org/?p=87430> and in section 3.2 and 9.23.2 of *Every Vote Equal* book (www.Every-Vote-Equal.com).

- The ***whole-number proportional approach*** would divide a state's electoral votes to the nearest whole number based on the number of popular votes that a candidate receives in a state. Because this method does not divide electoral votes, it could be implemented by state law in an individual state or, of course, on a nationwide basis by a federal constitutional amendment. The whole-number proportional approach was placed on the ballot by an initiative petition considered by Colorado voters in the November 2004, election (Amendment 36), but was defeated. It has been proposed in various bills in several states over the years without being enacted. See section 4.1 and 9.23.2 of *Every Vote Equal* book (www.Every-Vote-Equal.com).

- An innovative ***modified proportional approach*** was proposed in 2014 by Michigan State Representative Peter Lund (R). Under this approach, the candidate winning the popular vote in Michigan would get at least nine Electoral-College votes (one more than half of Michigan's 16 electoral votes). In addition, the candidate winning the popular vote in Michigan would get one additional electoral vote for every 1.5 percentage points above 50% that the candidate receives. Any remaining electoral votes would go to the second-place finisher. For example, Obama won 54% of Michigan's popular vote in 2012 and therefore won all 16 electoral votes under the prevailing winner-take-all rule. Under Representative Lund's proposal, Obama would have received 11 electoral votes and Mitt Romney would have received five in 2012.

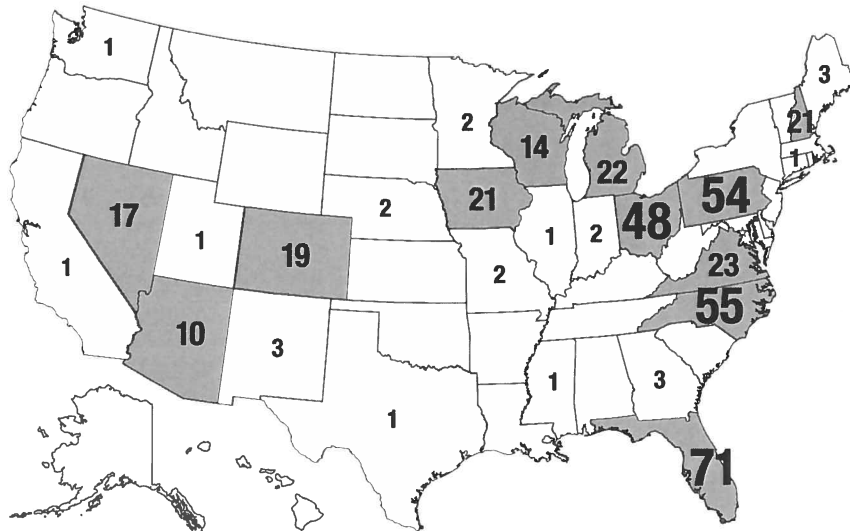
- ***Direct popular election of the President*** could be implemented by a federal constitutional amendment. In 1969, the U.S. House of Representatives approved, by a bipartisan 338–70 vote, a constitutional amendment sponsored by Representative Emmanuel Celler (D), but the proposal died in the Senate. See section 3.4 of *Every Vote Equal* book (www.Every-Vote-Equal.com).

- The ***National Popular Vote interstate compact*** can be enacted by states. It would guarantee the Presidency to the candidate who receives the most popular votes in all 50 states and the District of Columbia. See chapter 6 of *Every Vote Equal* book (www.Every-Vote-Equal.com) for section-by-section explanation. Also, see www.NationalPopularVote.com.

2016 General-Election Campaign Events

The map shows the location of the 399 general-election campaign events by the 2016 presidential and vice-presidential nominees of the two major political parties.

- 94% of the 2016 events (375 of the 399) were in just 12 states. This validates former presidential candidate and Governor Scott Walker's statement:
"The nation as a whole is not going to elect the next president. Twelve states are." (September 2, 2015)
- Two-thirds (273 of 399) of the events were in just 6 states (Florida, North Carolina, Pennsylvania, Ohio, Virginia, and Michigan).
- Over half of the events (57%) were in just 4 states (Florida, North Carolina, Pennsylvania, Ohio).
- 24 states have been totally ignored.



Data was compiled by FairVote. "Campaign events" are defined as *public* events in which a candidate is soliciting the *state's* voters (e.g., rallies, speeches, town hall meetings). This count does not include visiting a state for the sole purpose of conducting a private fund-raising event, participating in a presidential debate or interview in a studio, giving a speech to an organization's national convention, attending a non-campaign event (e.g., the Al Smith Dinner in New York City), or attending a private meeting.

The count of Republican campaign events started on Friday July 22, 2016 (the day after the end of the party's national convention), and the count of Democratic campaign events started on Friday July 29, 2016 (the day after the end of the party's national convention).

Almost All of the 399 General-Election Campaign Events in 2016 Occurred in States Where President Trump's Percentage of the Two-Party Vote Was Between 43% and 51%

The states are listed in order of President Trump's percentage of the two-party 2016 presidential vote—with the most Republican states at the top.

The second column shows the total number of general-election campaign events for each state (out of a nationwide total of 399). The states in bold received a 10 or more campaign events. The other states received only zero, one, two, or three campaign events.

As can be seen, almost all the 2016 general-election campaign events (384 of 399) occurred in states where Trump's percentage of the two-party vote was in the eight-point range between 43% and 51% — that is, “battleground” states.

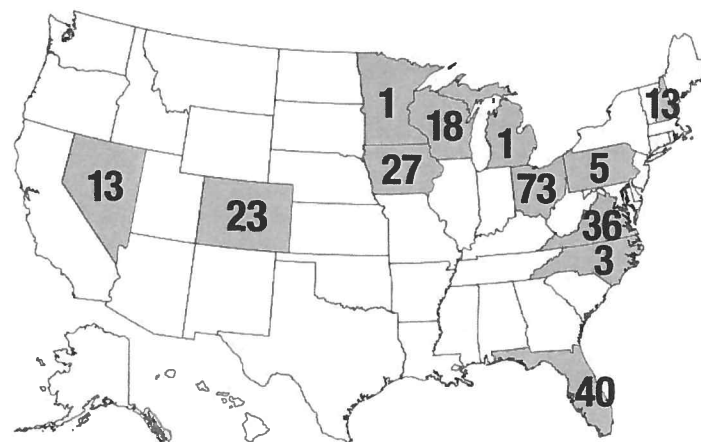
Trump Percent	Campaign events	State	Trump (R)	Clinton (D)	R-Margin	D-Margin	R-EV	D-EV
68%	0	Wyoming	174,419	55,973	118,446		3	
68%	0	West Virginia	489,371	188,794	300,577		5	
65%	0	Oklahoma	949,136	420,375	528,761		7	
63%	0	North Dakota	216,794	93,758	123,036		3	
63%	0	Kentucky	1,202,971	628,854	574,117		8	
62%	0	Alabama	1,318,255	729,547	588,708		9	
62%	0	South Dakota	227,721	117,458	110,263		3	
61%	0	Tennessee	1,522,925	870,695	652,230		11	
61%	0	Arkansas	684,872	380,494	304,378		6	
59%	0	Idaho	409,055	189,765	219,290		4	
59%	2	Nebraska	495,961	284,494	211,467		5	
58%	0	Louisiana	1,178,638	780,154	398,484		8	
58%	1	Mississippi	700,714	485,131	215,583		6	
56%	2	Indiana	1,557,286	1,033,126	524,160		11	
56%	2	Missouri	1,594,511	1,071,068	523,443		10	
56%	0	Kansas	671,018	427,005	244,013		6	
56%	0	Montana	279,240	177,709	101,531		3	
55%	0	South Carolina	1,155,389	855,373	300,016		9	
52%	1	Texas	4,685,047	3,877,868	807,179		38	
51%	48	Ohio	2,841,006	2,394,169	446,837		18	
51%	0	Alaska	163,387	116,454	46,933		3	
51%	21	Iowa	800,983	653,669	147,314		6	
50%	3	Georgia	2,089,104	1,877,963	211,141		16	
50%	55	North Carolina	2,362,631	2,189,316	173,315		15	
49%	71	Florida	4,617,886	4,504,975	112,911		29	
48%	54	Pennsylvania	2,970,733	2,926,441	44,292		20	
48%	10	Arizona	1,252,401	1,161,167	91,234		11	
47%	22	Michigan	2,279,543	2,268,839	10,704		16	
47%	14	Wisconsin	1,405,284	1,382,536	22,748		10	
46%	21	New Hampshire	345,790	348,526		2,736		4
46%	17	Nevada	512,058	539,260		27,202		6
45%	1	Utah	515,231	310,676	204,555		6	
45%	2	Minnesota	1,323,232	1,367,825		44,593		10
45%	3	Maine	335,593	357,735		22,142	1	3
44%	23	Virginia	1,769,443	1,981,473		212,030		13
43%	19	Colorado	1,202,484	1,338,870		136,386		9
42%	0	Delaware	185,127	235,603		50,476		3
41%	0	New Jersey	1,601,933	2,148,278		546,345		14
41%	1	Connecticut	673,215	897,572		224,357		7
40%	3	New Mexico	319,667	385,234		65,567		5
39%	0	Oregon	782,403	1,002,106		219,703		7
39%	0	Rhode Island	180,543	252,525		71,982		4
38%	1	Illinois	2,146,015	3,090,729		944,714		20
37%	1	Washington	1,221,747	1,742,718		520,971		12
37%	0	New York	2,819,557	4,556,142		1,736,585		29
34%	0	Maryland	943,169	1,677,928		734,759		10
33%	0	Massachusetts	1,090,893	1,995,196		904,303		11
31%	1	California	4,483,814	8,753,792		4,269,978		55
30%	0	Vermont	95,369	178,573		83,204		3
30%	0	Hawaii	128,847	266,891		138,044		4
4%	0	District of Columbia	12,723	282,830		270,107		3
46%	399		62,985,134	65,853,652			305	233

Data from *Leip's Election Almanac*. The number of electoral votes shown in columns 8 and 9 do not reflect “grand-standing” votes cast on December 19, 2016 in the Electoral College by faithless electors from Texas, Colorado, and Washington state. Maine and Nebraska award electoral votes by congressional district. In Maine in 2016, President Trump won one electoral vote by carrying the 2nd congressional district (northern part of the state). August 1, 2017

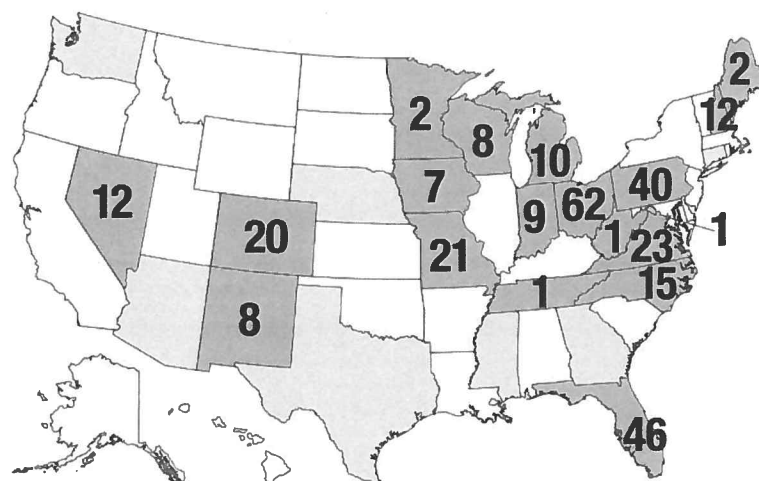
2016 General-Election Campaign Events



2012 General-Election Campaign Events



2008 General-Election Campaign Events



2008, 2012, and 2016 General-Election Campaign Events

See discussion on back.

Electoral votes	State	2008 events	2012 events	2016 events
9	Alabama			
3	Alaska			
11	Arizona			10
6	Arkansas			
55	California			1
9	Colorado	20	23	19
7	Connecticut			1
3	D.C.	1		
3	Delaware			
29	Florida	46	40	71
16	Georgia			3
4	Hawaii			
4	Idaho			
20	Illinois			1
11	Indiana	9		2
6	Iowa	7	27	21
6	Kansas			
8	Kentucky			
8	Louisiana			
4	Maine	2		3
10	Maryland			
11	Massachusetts			
16	Michigan	10	1	22
10	Minnesota	2	1	2
6	Mississippi			1
10	Missouri	21		2
3	Montana			
5	Nebraska			2
6	Nevada	12	13	17
4	New Hampshire	12	13	21
14	New Jersey			
5	New Mexico	8		3
29	New York			
15	North Carolina	15	3	55
3	North Dakota			
18	Ohio	62	73	48
7	Oklahoma			
7	Oregon			
20	Pennsylvania	40	5	54
4	Rhode Island			
9	South Carolina			
3	South Dakota			
11	Tennessee	1		
38	Texas			1
6	Utah			1
3	Vermont			
13	Virginia	23	36	23
12	Washington			1
5	West Virginia	1		
10	Wisconsin	8	18	14
3	Wyoming			
538	Total	300	253	399

- **In 2008, only 3 of the 13 smallest states** (3 or 4 electoral votes) received any of the 300 general-election campaign events. The closely divided battleground state of New Hampshire received 12 events. Maine (which awards electoral votes by congressional district) received 2 events. The District of Columbia received one event. All the other states in this group were ignored. **The small states are ignored not because they are small, but because (except for New Hampshire), they are one-party states in presidential elections.**

- **In 2008, only 7 of the 25 smallest states** (7 or fewer electoral votes) received any of the general-election campaign events. New Hampshire, Iowa, and Nevada each received a substantial number of events (12, 7, and 12, respectively). New Mexico (a battleground state at the time) received 8 events. West Virginia and the District of Columbia received 1 event each. All the other small states in this group were ignored.

- **In 2012, only 1 of the 13 smallest states** (3 or 4 electoral votes) received any of the 253 general-election campaign events, namely the closely divided battleground state of New Hampshire. All the other states in this group were ignored.

- **In 2012, only 3 of the 25 smallest states** (7 or fewer electoral votes) received any of the general-election campaign events. All the other small states were ignored. The 3 states that received attention were the closely divided battleground states of New Hampshire, Iowa, and Nevada. All the other states in this group were ignored.

- **In 2016, only 2 of the 13 smallest states** (3 or 4 electoral votes) received any of the 399 general-election campaign events. New Hampshire received 21 because it was a closely divided battleground state. Maine (which awards electoral votes by congressional district) received 3 campaign events because its 2nd congressional district was closely divided (and, indeed, Trump carried it). All the other states in this group were ignored. were ignored.

- **In 2016, only 9 of the 25 smallest states** (7 or fewer electoral votes) received any general-election campaign events. New Hampshire, Iowa, and Nevada received attention because they were closely divided battleground states. Maine and Nebraska (which award electoral votes by congressional district) received some attention one of their congressional districts was closely divided. New Mexico received some attention (from the Republican campaign only) because former New Mexico Governor Johnson was running for President and it appeared his strong home-state support might make the state competitive. Utah received some attention from Republicans because the McMullin candidacy might have made the state competitive. Connecticut and Mississippi also received one campaign event. All the other small states in this group were ignored.

Electoral Votes: The states are arranged in order of their number of electoral votes using the distribution of electoral votes used in the 2012 and 2016 elections. In the 2008 election, 18 states had a different number of electoral votes—specifically, Iowa–7, Nevada–5, Utah–5, Louisiana–9, South Carolina–8, Missouri–11, Arizona–10, Massachusetts–12, Washington state 11, New Jersey–15, Georgia–15, Michigan–17, Ohio–20, Illinois–21, Pennsylvania–21, Florida–27, New York–31, and Texas–34.

All of the 253 General-Election Campaign Events in 2012 Occurred in States Where Romney's Percentage of the Two-Party Vote Was Between 45% and 51%

The states are listed below in order of Romney's 2012 percentage—with the most Republican (red) states at the top.

The second column shows the total number of general-election campaign events for each state (out of a nationwide total of 253).

The only states that received any campaign events (second column) and any significant ad money (third column) were the 12 states (shown in black in the middle of the table) where the Romney received between 45% and 51% of the vote—that is, within 3 points of his nationwide percentage of 48%.

The fourth column shows donations from each state.

Romney Percent	Campaign events	TV ad spending	Donations	State	Romney (R)	Obama (D)	R-Margin	D-Margin	R-EV	D-EV
75%	0	\$0	\$11,230,092	Utah	740,600	251,813	488,787		6	
71%	0	\$0	\$2,225,204	Wyoming	170,962	69,286	101,676		3	
67%	0	\$1,300	\$7,129,393	Oldahoma	891,325	443,547	447,778		7	
66%	0	\$290	\$3,586,883	Idaho	420,911	212,787	208,124		4	
64%	0	\$100	\$1,985,666	WV	417,584	238,230	179,354		5	
62%	0	\$0	\$3,296,533	Arkansas	647,744	394,409	253,335		6	
62%	0	\$400	\$6,079,673	Kentucky	1,087,190	679,370	407,820		8	
61%	0	\$80	\$6,736,196	Alabama	1,255,925	795,696	460,229		9	
61%	0	\$0	\$4,796,947	Kansas	692,634	440,726	251,908		6	
61%	0	\$0	\$3,128,691	Nebraska	475,064	302,081	172,983		5	
60%	0	\$346,490	\$844,129	ND	188,320	124,966	63,354		3	
60%	0	\$1,440	\$11,967,542	Tennessee	1,462,330	960,709	501,621		11	
59%	0	\$3,990	\$7,510,687	Louisiana	1,152,262	809,141	343,121		8	
59%	0	\$1,810	\$1,267,192	SD	210,610	145,039	65,571		3	
58%	0	\$2,570	\$64,044,620	Texas	4,569,843	3,308,124	1,261,719		38	
57%	0	\$0	\$2,153,869	Alaska	164,676	122,640	42,036		3	
57%	0	\$0	\$2,295,005	Montana	267,928	201,839	66,089		3	
56%	0	\$0	\$3,525,145	Mississippi	710,746	562,949	147,797		6	
55%	0	\$40,350	\$14,631,204	Arizona	1,233,654	1,025,232	208,422		11	
55%	0	\$300	\$8,210,564	Indiana	1,420,543	1,152,887	267,656		11	
55%	0	\$127,560	\$11,512,255	Missouri	1,482,440	1,223,796	258,644		10	
55%	0	\$710	\$6,686,788	SC	1,071,645	865,941	205,704		9	
54%	0	\$6,020	\$21,906,923	Georgia	2,078,688	1,773,827	304,861		16	
51%	3	\$80,000,000	\$18,658,894	NC	2,270,395	2,178,391	92,004		15	
50%	40	\$175,776,780	\$56,863,167	Florida	4,162,341	4,235,965		73,624		29
48%	73	\$148,000,000	\$20,654,423	Ohio	2,661,407	2,827,621		166,214		18
48%	36	\$127,000,000	\$32,428,002	Virginia	1,822,522	1,971,820		149,298		13
47%	23	\$71,000,000	\$20,695,557	Colorado	1,185,050	1,322,998		137,948		9
47%	27	\$52,194,330	\$4,780,400	Iowa	730,617	822,544		91,927		6
47%	13	\$55,000,000	\$6,717,552	Nevada	463,567	531,373		67,806		6
47%	13	\$34,000,000	\$4,389,577	NH	329,918	369,561		39,643		4
47%	5	\$31,000,000	\$27,661,702	Pennsylvania	2,680,434	2,990,274		309,840		20
47%	18	\$40,000,000	\$10,011,235	Wisconsin	1,410,966	1,620,985		210,019		10
46%	1	\$0	\$11,112,922	Minnesota	1,320,225	1,546,167		225,942		10
45%	1	\$15,186,750	\$19,917,206	Michigan	2,115,256	2,564,569		449,313		16
45%	0	\$1,162,000	\$5,770,738	New Mexico	335,788	415,335		79,547		5
44%	0	\$460	\$10,463,528	Oregon	754,175	970,488		216,313		7
42%	0	\$195,610	\$3,452,126	Maine	292,276	401,306		109,030		4
42%	0	\$0	\$23,600,404	Washington	1,290,670	1,755,396		464,726		12
41%	0	\$330	\$18,644,901	Connecticut	634,892	905,083		270,191		7
41%	0	\$0	\$2,141,203	Delaware	165,484	242,584		77,100		3
41%	0	\$270	\$107,928,359	Illinois	2,135,216	3,019,512		884,296		20
41%	0	\$0	\$24,062,220	New Jersey	1,478,088	2,122,786		644,698		14
38%	0	\$320	\$137,804,736	California	4,839,958	7,854,285		3,014,327		55
38%	0	\$0	\$35,927,766	Mass	1,188,314	1,921,290		732,976		11
37%	0	\$1,120	\$25,579,933	Maryland	971,869	1,677,844		705,975		10
36%	0	\$55,600	\$76,743,682	New York	2,485,432	4,471,871		1,986,439		29
36%	0	\$0	\$2,226,963	Rhode Island	157,204	279,677		122,473		4
32%	0	\$0	\$2,732,572	Vermont	92,698	199,239		106,541		3
28%	0	\$0	\$3,217,863	Hawaii	121,015	306,658		185,643		4
7%	0	\$0	\$16,670,938	DC	21,381	267,070		245,689		3
48.0%	253	\$831,106,980	\$937,609,770	Total	60,930,782	65,897,727			206	332



March 2013

Presidential Pork and the Broken Electoral College

Swing States Favored in the Allocation of Federal Grant Money

Current Electoral College rules have an obvious impact on how presidential candidates campaign. In 2012, more than 99% of general election ad dollars were targeted at voters in only ten states, which were the only states to be visited for post-convention campaign rallies by the major party nominees. Now we have evidence of how the Electoral College affects the way that presidents govern as well.

In his dissertation *The Politics of Federal Grants: Presidential Influence over the Distribution of Federal Funds*, Dr. John Hudak, a Brookings Institution fellow, reported on these findings:

- **Swing states get more:** Overall, controlling for variables such as state size and natural disaster relief funds, presidential election swing states received **7.6% more federal grants** than did safe states, and about **5.7% more grant money** between 1996 and 2008.
- **The swing state edge rises close to elections:** Although all states experienced an increase in grant money in the two years prior to an election, swing states received the most: about **9% more grants** and **7% more grant money** than safe states. Overall, swing states experienced an **11.5% increase in grants** and an **8.2% increase in grant money** in the two years prior to an election compared to the first two years of a presidential term.
- **It's not just about re-election:** The difference in allocation between swing and safe states does not vary between a president's first and second terms. Presidents and their administrations apparently seek to ensure that their successor is of the same political party.
- **What it means for a spectator state:** If Tennessee had been a swing state in 2008, it would have likely received **300 more federal grants in 2007, for a total of \$60 million.**

Federal grants are paid for with tax dollars from Americans in all states. They should be awarded based on need, not as another "campaign resource." We can ask executive leaders to ignore electoral incentives, but it's more prudent to take away those incentives in the first place.

Under the National Popular Vote Interstate Compact, the White House would always go the candidate who wins the most popular vote in all 50 states and the District of Columbia. All votes would be equally meaningful, and states would receive grants based on their needs, not politicians' electoral needs.

- For more on National Popular Vote plan, see <http://www.NationalPopularVote.com>
- For more on Dr. Hudak's work, see: <http://www.Brookings.edu/experts/hudakj>

Small States Are Almost Entirely Ignored in Presidential Elections Under Current State-by-State Winner-Take-All Method of Awarding Electoral Votes

The table below shows the number of general-election campaign events in 2008, 2012, and 2016 in the 13 smallest states (i.e., states with three or four electoral votes). As can be seen, 11 of the 13 smallest states were totally ignored in all three elections. One of the 13 smallest states (New Hampshire) received virtually all of the campaign events, while another (Maine) received five and DC received one.

EV	State	2008 events	2012 events	2016 events	Population
3	Wyoming				568,300
3	D.C.	1			601,723
3	Vermont				630,337
3	North Dakota				675,905
3	Alaska				721,523
3	South Dakota				819,761
3	Delaware				900,877
3	Montana				994,416
4	Rhode Island				1,055,247
4	New Hampshire	12	13	21	1,321,445
4	Maine	2		3	1,333,074
4	Hawaii				1,366,862
4	Idaho				1,573,499
44	Total	15	13	24	12,562,969

The reason why New Hampshire received so much attention is that it is a closely divided battleground state. The Democratic nominee received 55%, 53%, and 50.2% of the two-party vote in 2008, 2012, and 2016, respectively. Thus, both parties campaigned vigorously in New Hampshire because each had something to gain or lose.

Maine received two events in 2008 and three in 2016 because Maine awards electoral votes by congressional district. The Democratic nominee in 2008, 2012, and 2016 easily won the non-competitive 1st district and the state as a whole. However, in 2008 and 2016, Maine's 2nd district was closely divided. Indeed, Trump won Maine's 2nd district in 2016 and thereby won one electoral vote from Maine.

The 12 small non-battleground states (all except New Hampshire) have a combined population of a little more than 11 million. Coincidentally, Ohio has almost the same population as these 12 small states. Because of the bonus of two electoral votes that every state receives, the 12 small non-battleground states have 40 electoral votes, whereas Ohio has less than half as many electoral votes (20 in 2008, and 18 after the 2010 census). However, Ohio's 11 million people received 183 campaign events out of a total of 952 events in 2008, 2012, and 2016 — almost 20% of the national total.

In short, political power under the current state-by-state winner-take-all method of awarding electoral votes does not arise from the number of electoral votes that a state possesses, but, instead, from whether the state is a closely divided battleground state.

The same pattern emerges if we expand the discussion to the 25 smallest states (i.e., states with three to seven electoral votes). As can be seen from the table, 8 of the 25 smallest states were totally ignored in all three elections. Only three of these 25 states (New Hampshire, Nevada, and Iowa) received attention in all three years, and these three states received 87% of the campaign events (143 out of 165).

EV	State	2008 events	2012 events	2016 events	Population
3	Wyoming				568,300
3	D.C.	1			601,723
3	Vermont				630,337
3	North Dakota				675,905
3	Alaska				721,523
3	South Dakota				819,761
3	Delaware				900,877
3	Montana				994,416
4	Rhode Island				1,055,247
4	New Hampshire	12	13	21	1,321,445
4	Maine	2		3	1,333,074
4	Hawaii				1,366,862
4	Idaho				1,573,499
5	Nebraska			2	1,831,825
5	West Virginia	1			1,859,815
5	New Mexico	8		3	2,067,273
6	Nevada	12	13	17	2,709,432
6	Utah			1	2,770,765
6	Kansas				2,863,813
6	Arkansas				2,926,229
6	Mississippi			1	2,978,240
6	Iowa	7	27	21	3,053,787
7	Connecticut			1	3,581,628
7	Oklahoma				3,764,882
7	Oregon				3,848,606
116	Total	42	53	70	46,819,264

August 4, 2018

The 50 Biggest Cities Constitute 15% of the U.S. Population of 309,000,000

Rank	City	2010 Population
1	New York	8,175,133
2	Los Angeles	3,792,621
3	Chicago	2,695,598
4	Houston	2,099,451
5	Philadelphia	1,526,006
6	Phoenix	1,445,632
7	San Antonio	1,327,407
8	San Diego	1,307,402
9	Dallas	1,197,816
10	San Jose	945,942
11	Jacksonville	821,784
12	Indianapolis	820,445
13	Austin	790,390
14	San Francisco	805,235
15	Columbus	787,033
16	Fort Worth	741,206
17	Charlotte	731,424
18	Detroit	713,777
19	El Paso	649,121
20	Memphis	646,889
21	Boston	617,594
22	Seattle	608,660
23	Denver	600,158
24	Baltimore	620,961
25	Washington	601,723
26	Nashville	601,222
27	Louisville	597,337
28	Milwaukee	594,833
29	Portland	583,776
30	Oklahoma City	579,999
31	Las Vegas	583,756
32	Albuquerque	545,852
33	Tucson	520,116
34	Fresno	494,665
35	Sacramento	466,488
36	Long Beach	462,257
37	Kansas City	459,787
38	Mesa	439,041
39	Virginia Beach	437,994
40	Atlanta	420,003
41	Colorado Springs	416,427
42	Raleigh	403,892
43	Omaha	408,958
44	Miami	399,457
45	Tulsa	391,906
46	Oakland	390,724
47	Cleveland	396,815
48	Minneapolis	382,578
49	Wichita	382,368
50	Arlington, Texas	365,438
Total	50 biggest cities	46,795,097

August 1, 2017

Rural States are Disadvantaged under the Current State-By-State Winner-Take-All Method of Awarding Electoral Votes

Because rural states are generally not battleground states, the current state-by-state winner-take-all method of awarding electoral votes diminishes the influence of rural states.

Political influence in the Electoral College is based on whether the state is a closely divided battleground state. The current state-by-state winner-take-all method of awarding electoral votes does not enhance the influence of rural states, because most rural states are not battleground states.

The 10 most rural states are:

- Vermont (60.61% rural),
- Maine (57.86% rural),
- West Virginia (53.75% rural),
- Mississippi (50.20% rural),
- South Dakota (47.14% rural),
- Arkansas (46.10% rural),
- Montana (44.69% rural),
- North Dakota (44.68% rural),
- Alabama (43.74% rural), and
- Kentucky (43.13% rural).

None of the 10 most rural states is a closely divided battleground state.

The table on the next page provides information on all the states. Column 2 shows, for each state, the rural population (using the definition found in the 2000 *Statistical Abstract of the United States*). Column 3 shows the state's total population. Column 4 shows the rural percentage (column 2 divided by column 3). Column 5 shows the rural "index" (obtained by dividing the state's rural percentage by the overall national rural percentage of 20.11%). An index above 100 indicates that the state is more rural than the nation as a whole, whereas an index below 100 indicates that the state is less rural. Thirty-three states have an index above 100 (meaning that more than 20.11% of their population is rural), whereas 18 states have an index below 100 (that is, they are less rural than the nation as a whole).

Rural population of the states

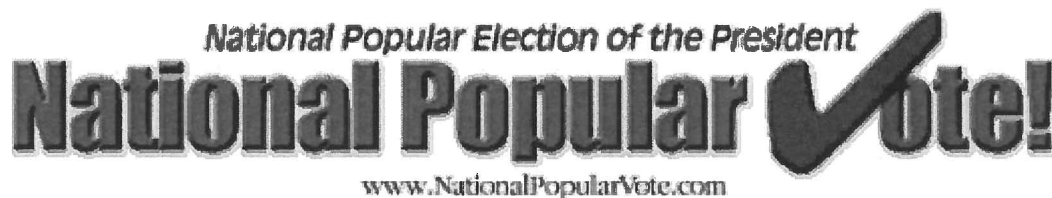
State	Rural population	Total population	Rural percent	Rural index
Vermont	376,379	621,000	60.61%	301
Maine	762,045	1,317,000	57.86%	288
West Virginia	975,564	1,815,000	53.75%	267
Mississippi	1,457,307	2,903,000	50.20%	250
South Dakota	363,417	771,000	47.14%	234
Arkansas	1,269,221	2,753,000	46.10%	229
Montana	414,317	927,000	44.69%	222
North Dakota	283,242	634,000	44.68%	222
Alabama	1,981,427	4,530,000	43.74%	218
Kentucky	1,787,969	4,146,000	43.13%	214
New Hampshire	503,451	1,300,000	38.73%	193
Iowa	1,138,892	2,954,000	38.55%	192
South Carolina	1,584,888	4,198,000	37.75%	188
North Carolina	3,199,831	8,541,000	37.46%	186
Tennessee	2,069,265	5,901,000	35.07%	174
Wyoming	172,438	507,000	34.01%	169
Oklahoma	1,196,091	3,524,000	33.94%	169
Alaska	215,675	655,000	32.93%	164
Idaho	434,456	1,393,000	31.19%	155
Wisconsin	1,700,032	5,509,000	30.86%	153
Missouri	1,711,769	5,755,000	29.74%	148
Nebraska	517,538	1,747,000	29.62%	147
Indiana	1,776,474	6,238,000	28.48%	142
Kansas	767,749	2,736,000	28.06%	140
Minnesota	1,429,420	5,101,000	28.02%	139
Louisiana	1,223,311	4,516,000	27.09%	135
Georgia	2,322,290	8,829,000	26.30%	131
Virginia	1,908,560	7,460,000	25.58%	127
Michigan	2,518,987	10,113,000	24.91%	124
New Mexico	455,545	1,903,000	23.94%	119
Pennsylvania	2,816,953	12,406,000	22.71%	113
Ohio	2,570,811	11,459,000	22.43%	112
Oregon	727,255	3,595,000	20.23%	101
Delaware	155,842	830,000	18.78%	93
Washington	1,063,015	6,204,000	17.13%	85
Texas	3,647,539	22,490,000	16.22%	81
Colorado	668,076	4,601,000	14.52%	72
Maryland	737,818	5,558,000	13.27%	66
New York	2,373,875	19,227,000	12.35%	61
Connecticut	417,506	3,504,000	11.92%	59
Illinois	1,509,773	12,714,000	11.87%	59
Utah	262,825	2,389,000	11.00%	55
Arizona	607,097	5,744,000	10.57%	53
Florida	1,712,358	17,397,000	9.84%	49
Rhode Island	95,173	1,081,000	8.80%	44
Massachusetts	547,730	6,417,000	8.54%	42
Hawaii	103,312	1,263,000	8.18%	41
Nevada	169,611	2,335,000	7.26%	36
New Jersey	475,263	8,699,000	5.46%	27
California	1,881,985	35,894,000	5.24%	26
D.C.	0	554,000	0.00%	0
Total	59,061,367	293,658,000	20.11%	100

January 7, 2018

Big Cities, Rural Areas, and Suburbs

- The biggest 100 cities contained just one-sixth of the U.S. population, and they voted 63% Democratic in 2004.
- The rural areas (i.e., places outside the nation's Metropolitan Statistical Areas) contained one-sixth of the U.S. population, and they voted 60% Republican in 2004. That is, the biggest cities are almost exactly balanced out by rural areas in terms of population and partisan composition.
- The remaining two thirds of the U.S. population live inside a Metropolitan Statistical Area (MSA), but outside the central city. These suburban areas are evenly divided politically.

January 2, 2018



February 24, 2014

Answers to Questions about Presidential Vote Counting and the National Popular Vote Bill

Hon. Ed Jutila
Connecticut House of Representatives
Legislative Office Building
Hartford, CT 06106

Dear Representative Jutila,

Sean Parnell (a lobbyist engaged by the Freedom Foundation of Olympia, Washington to oppose the National Popular Vote Compact) has suggested several hypothetical scenarios in which the presidential vote count might be “incomplete, inaccurate, or simply unavailable” prior to the meeting of the Electoral College in mid-December. Under Parnell’s scenario, a rogue Secretary of State could unilaterally “frustrate” the operation of the National Popular Vote Compact by refusing to certify the statewide vote count for President from his or her state.

SHORT ANSWER:

Existing state laws, existing federal laws, and the provisions of the National Popular Vote Compact prevent Parnell’s hypothetical scenario from being successfully executed.

- Federal law requires creation and delivery of a certificate containing the popular-vote count for President *prior* to the meeting of the Electoral College. Because the refusal of a rogue Secretary of State to certify his own state’s popular-vote count would disenfranchise his own state, voters favoring the about-to-be-disadvantaged presidential candidate could readily obtain a court order (mandamus) compelling compliance with federal law.
- Independently of the above federal requirements, every state has a state law providing a statutory deadline for certification of the popular-vote count for President by a specific date (long before the meeting of the Electoral College in mid-December) at the local-level or state level or both. Voters favoring the about-to-be-disadvantaged candidate could readily obtain a court order (mandamus) compelling compliance with state law.
- Presidential elections in the United States do not depend on the gracious willingness of Secretaries of State to certify their own state’s election returns. If Parnell’s theory about the unlimited power of a rogue Secretary of State to disenfranchise his own state’s voters had any validity, any one of eight Democratic Secretaries of State could have thrown the Presidency to Al Gore in 2000. In 2000, there were eight states that George W. Bush carried that had a Democratic Secretary of State and that had enough electoral votes (five or more) which, if not cast in the Electoral College,

would have elected Al Gore as President (*even after* Bush received Florida's 25 electoral votes). Under the U.S. Constitution, winning the White House requires a majority of presidential electors *appointed*. No Secretary of State has the power (because of both state and federal laws) to prevent the popular vote from his or her state from being counted.

- In addition to existing state and federal laws, the National Popular Vote Compact gives the compacting states tools to guarantee that their electoral votes will be cast, and be cast in favor of the presidential candidate who received the most popular votes in all 50 states (and D.C.). Publicly available official counts for President exist in at least two separate places in *every* state long before the meeting of the Electoral College in mid-December, namely (1) at the level of local government where the votes were actually counted (e.g., towns in Connecticut and counties in most other states) and (2) at the state-level office to which the local vote counts were transmitted. Either set of publicly available official counts could be used.

MORE DETAILED DISCUSSION AND ANSWER:

In testimony before the Rhode Island House Judiciary Committee, Sean Parnell claimed:

"There's little reason to believe that non-compact states will ... ensure all the votes are counted by the deadline. They may very well decide that it is in their interest to frustrate National Popular Vote, and not finalize their vote counts until well after their electors have met and voted....

"States are not required to count all ballots by the so-called Safe Harbor date, six days before electors meet. Nor are they required to submit their Certificates of Ascertainment by that date. In fact the states are not required to send in their Certificates of Ascertainment until such time as is (I'm taking the word from U.S. Code Title 3, Section 6) "practicable" after the meeting of electors. And they are not due to the Archivist of the United States until 10 days after the electors meet....

"In the 2012 election, the state of New York submitted its Certificate of Ascertainment on December 10th, but did not certify its election results until December 31st. In the certified results, President Obama gained more than 300,000 additional votes on top of the total given in the Certificate of Ascertainment. And Governor Romney gained more than 80,000 additional votes. Under our current system, because President Obama had very clearly won the state of New York, the 380,000 votes not included in the Certificate of Ascertainment, did not make a difference. But had NPV been in effect, and the election had been close, such as in 1960 and 2000, the vote counting delay would have been crucial...."¹

Virtually every statement above by Sean Parnell is incorrect. To understand why Mr. Parnell is mistaken, we start by discussing how votes for President are counted.

¹ Hearing on the National Popular Vote bill (Rhode Island bill H5575) at the House Judiciary Committee. Providence, Rhode Island. March 12, 2013.

How Votes for President Are Counted

Contrary to Sean Parnell's claims, *every* state has a specific statutory deadline (long before the mid-December meeting of the Electoral College) for finalizing an official count at either the local or state level and, in almost every state, at *both* levels.

Individual voters cast their votes for President in "election districts" (also called "precincts") throughout the United States.

Shortly after the polls close on Election Night, an official precinct tally is created for each candidate for each office on the ballot (including President) and for the "yes" and "no" positions for each ballot measure. If the votes are counted at the precinct location (as they are, for example, in Connecticut), the election officials at the precinct level produce an official document certifying their precinct's tally.

Precinct tallies are then typically forwarded to some unit of local government (the town level in Connecticut and the county level in most states), and officials at that level of government typically produce an official document aggregating the results from their local area.

Although the procedures vary from state to state, representatives of the candidates, political parties, proponents and opponents of ballot measures, civic groups, and the media typically all have the ability to immediately obtain the vote count for each precinct. Indeed, the almost-instant availability of precinct-level vote tallies provides the basis for the vote tallies that are posted on government web sites and broadcast by the media on Election Night.

Existing state laws also require rapid transmission of official documentation of vote tallies to some designated central location (e.g., the secretary of state). Rapid transmission is required by law in order to prevent a potentially corrupt locality from withholding its vote tallies until it learns the results from other parts of the state.

Connecticut's rapid reporting requirements are typical. Connecticut law requires the delivery of election results from the towns to the Secretary of State either

- (1) by electronic means by midnight on Election Day or
- (2) on paper by 6 PM of the next day.

Specifically, §9-314 of Chapter 148 of Title 9 of the Connecticut General Statutes (entitled "Return of list of votes by moderator") provides:

"(a) As used in this subsection, "moderator" means the moderator of each state election in each town not divided into voting districts and the head moderator in each town divided into voting districts.

The moderator shall make out a duplicate list of the votes given in the moderator's town for each of the following officers: Presidential electors, Governor, Lieutenant Governor, Secretary of the State, Treasurer, Comptroller, Attorney General, United States senator, representative in Congress, state senator, judge of probate, state representative and registrars of voters when said officers are to be chosen.

Said list shall include a statement of the total number of names on the official check list of such town and the total number checked as having voted.

The moderator may transmit such list to the Secretary of the State by facsimile machine or other electronic means prescribed by the Secretary of the State, **not**

later than midnight on Election Day. If the moderator transmits such list by such electronic means, the moderator shall also seal and deliver one of such lists to the Secretary of the State **not later than the third day after the election.** If the moderator does not transmit such list by such electronic means, the moderator shall seal and deliver one of such lists by hand either (1) to the Secretary of the State **not later than six o'clock p.m. of the day after the election,** or (2) to the state police **not later than four o'clock p.m. of the day after the election,** in which case the state police shall deliver it by hand to the Secretary of the State **not later than six o'clock p.m. of the day after the election.** Any such moderator who fails to so deliver such list to either the Secretary of the State or the state police by the time required shall pay a late filing fee of fifty dollars. The moderator shall also deliver one of such lists to the clerk of such town on or before the day after such election. The Secretary of the State shall enter the returns in tabular form in books kept by the Secretary for that purpose and present a printed report of the same, with the name of, and the total number of votes received by, each of the candidates for said offices, to the General Assembly at its next session.” [Emphasis added]

Between 6 and 10 days after Election Day, local authorities make official determinations on the eligibility to vote of provisional ballots that were cast on Election Day, and the additional official documents are created at the local level to reflect the results of including eligible provisional ballots in the precinct totals. In addition, in the process of rechecking local vote tallies, local authorities sometimes notice and correct administrative errors that may have occurred on Election Night (e.g., transposing digits, accidentally double-counting a precinct).

Then, §9-322a of Chapter 148 of Title 9 of the Connecticut General Statutes requires town clerks to file “official returns” with the Secretary of State no later than 21 days after Election Day.

Not later than twenty-one days following each regular state election, the town clerk of each town divided into voting districts shall file with the Secretary of the State a consolidated listing, in tabular format, as prescribed by the Secretary of the State, of the official returns of each such voting district for all offices voted on at such election, including the total number of votes cast for each candidate, the total number of names on the registry list, and the total number of names checked as having voted, in each such district. The town clerk of such town shall certify that he or she has examined the lists transmitted under this section to determine whether there are any discrepancies between the total number of votes cast for a candidate at such election in such town, including for any recanvass conducted pursuant to section 9-311 or 9-311a, and the sum of the votes cast for the same candidate in all voting districts in such town. In the case of any such discrepancy, the town clerk shall notify the head moderator and certify that such discrepancy has been rectified. Each listing filed under this section shall be retained by the Secretary of the State not less than ten years after the date of the election for which it was filed.

The key point is that, within a few weeks after Election Day (long before the meeting of the Electoral College in mid-December), “official returns” consisting of the precinct-level vote

tallies for President exist *in at least two separate* places in Connecticut (and, indeed, every other state), namely

- at the level of the precinct or unit of local government where the votes were actually counted, and
- at the state office to which the local vote counts were transmitted.

The task remaining at the state level is to add up the “official returns” for each candidate for each office that come in from each town.

Connecticut law is also typical in that it requires the creation of the official statewide vote count by a specific day long before the meeting of the Electoral College in mid-December. In Connecticut, that deadline is the last Wednesday in November. Specifically, §9-315 of Chapter 148 of Title 9 of the Connecticut General Statutes (entitled “Canvass for presidential electors, U.S. senator and members of Congress”) provides:

“The votes returned as cast for a senator in Congress, representatives in Congress and presidential electors shall be publicly counted by the treasurer, Secretary of the State and comptroller on the last Wednesday of the month in which they were cast, and such votes shall be counted in conformity to any decision rendered by the judges of the supreme court as provided in section 9-323. In accordance with the count so made, they shall, on said day, declare what persons are elected senators in the Congress of the United States or representatives in Congress, and the Secretary of the State shall forthwith notify them by mail of their election; and they shall declare the proper number of persons having the greatest number of votes to be presidential electors and, in case of an equal vote for said electors, shall determine by lot from the persons having such equal number of votes the persons appointed, and the Secretary of the State shall forthwith notify them by mail of their appointment.”
[Emphasis added]

Note that the wording “having the greatest number of votes” in §9-315 is what establishes the winner-take-all rule in Connecticut (that is, the winners are the seven candidates for the position of presidential elector who were nominated by the political party of the presidential candidate “having the greatest number of [popular] votes” in Connecticut).

The declaration in Connecticut on the last Wednesday in November required by §9-315 is what section 5 of Title 3, chapter 1 of the United States Code (the so-called “safe harbor” statute) calls the “final determination” of the presidential count.

“If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.” [Emphasis added]

Note also that the statewide certification of the presidential vote count under §9-315 and the Secretary of State's notification under §9-315 is the process that identifies the winning presidential electors and gives them the right to cast Connecticut's votes in the Electoral College on the Monday after the second Wednesday in December.

Thus, the schedule of events concerning presidential elections in Connecticut in 2012 was as follows:

- November 6, 2012 — Election Day
- November 7, 2012 — 12 AM midnight deadline for counts from each town to reach the Secretary of State if sent by facsimile machine or other electronic means (as per §9-314)
- November 7, 2012 — 6 PM deadline for counts from each town to reach the Secretary of State if the counts were not already been transmitted by facsimile machine or other electronic means (as per §9-314)
- November 27, 2012 — Deadline for "official returns" to be filed with Secretary of State (as per §9-322a)
- November 28, 2012 — Last Wednesday in November — Deadline for completion of the canvass in Connecticut (as per §9-315)
- December 11, 2012 — "Safe Harbor" date (as per section 5 of Title 3, chapter 1 of the United States Code)
- December 17, 2013 — Meeting of the Electoral College

Sean Parnell envisions a hypothetical scenario in which rogue state officials unilaterally

"may very well decide that it is in their interest to frustrate National Popular Vote, and not finalize their vote counts until well after their electors have met and voted."

If the National Popular Vote Compact had been in effect in 2012, if Connecticut were a non-compacting state, and if Connecticut officials refused to produce the official statewide tally for President required by §9-315 by November 28, 2012, Connecticut supporters of the presidential candidate who would be disadvantaged by such refusal would have had three separate bases for seeking remedial action—*any one of which would have been sufficient to favorably resolve their problem*, namely

- existing state law,
- existing federal law, and
- provisions of the National Popular Vote Compact.

State Statutory Deadlines

Connecticut's existing specific statutory deadline (and similar statutory deadlines in other states) is not just friendly advice to the Secretary of State and other ministerial officials. It is a legal requirement enforceable in court in the same way that any other state law is enforceable—that is, a court can compel a state official to execute a provision of law by mandamus (a judicial writ ordering performance of a specific action) and a court can enjoin a state official from violating the law with an injunction (a judicial writ prohibiting a specific action).

The table below shows either (1) the specific statewide statutory deadline (for 43 of the 50 states) or (2) in the case of the seven states with no statewide deadline,² the *even earlier* specific statutory deadline for the creation of documents containing the official count for President from local areas. As can be seen, all of these deadlines are long before the meeting of the Electoral College in mid-December.³

State statutory deadlines for certification of presidential elections

State	Deadline
Alabama	Alabama §17-12-17: All returns of elections required by law to be sent to the Secretary of State must, within 22 days after an election , be opened, counted, and certified in the presence of the Governor, Secretary of State, and Attorney General, or two of them
Alaska	Alaska Statutes §15.15.370: Completion of ballot count; certificate: When the count of ballots is completed, and in no event later than the day after the election , the election board shall make a certificate in duplicate of the results. The certificate includes the number of votes cast for each candidate, for and against each proposition, yes or no on each question, and any additional information prescribed by the director. The election board shall, immediately upon completion of the certificate or as soon thereafter as the local mail service permits, send in one sealed package to the director one copy of the certificate and the register. In addition, all ballots properly cast shall be mailed to the director in a separate, sealed package. Both packages, in addition to an address on the outside, shall clearly indicate the precinct from which they come. Each board shall, immediately upon completion of the certification and as soon thereafter as the local mail service permits, send the duplicate certificate to the respective election supervisor. The director may authorize election boards in precincts in those areas of the state where distance and weather make mail communication unreliable to forward their election results by telephone, telegram, or radio.
Arizona	Arizona §16-642: The governing body holding an election shall meet and canvass the election not less than six days nor more than twenty days following the election . Arizona §16-648: On the fourth Monday following a general election , the secretary of state, in the presence of the governor and the attorney general, shall canvass all offices.
Arkansas	State-level: Within 20 days after the election Country-level: Arkansas 7-5-701: No earlier than forty-eight (48) hours after the election and no later than the fifteenth calendar day after the election , the county board of election commissioners, from the certificates and ballots received from the several precincts, shall proceed to ascertain, declare, and certify the result of the election to the Secretary

² Alaska, Delaware, Florida, New Hampshire, Ohio, Tennessee, Texas.

³ The District of Columbia Code does not contain a specific statutory deadline; however, because the District of Columbia is already a member of the National Popular Vote compact, the fourth clause of Article III of the compact establishes the statutory deadline on the District of Columbia (namely the federal “safe harbor” date).

	of State.
California	On the first Monday in the month following the election
Colorado	No later than the fifteenth day after any election
Connecticut	Last Wednesday in the month in which votes were cast
Delaware	Delaware Statutes Title 15, Chapter 57, §5701: Superior Court as board of canvass; convening and composition of Court: (a) The Superior Court shall convene in each county on the 2nd day after the general election at 10 a.m. , for the performance of the duties imposed upon it by §6 of article V of the Constitution of this State and by this chapter. Thereupon the Court, with the aid of such of its officers and such sworn assistants as it shall appoint, shall publicly ascertain the state of the election throughout the county and in the respective election districts by calculating the aggregate amount of all the votes for each office that shall have been given in all of the election districts of the county for every person voted for such office. For this purpose, the Court shall utilize the voting machine recording tapes, voting machine certificates, absentee vote tally sheets and write-in vote tally sheets for each election district provided by the Prothonotary and the Department of Elections for its county, whose representatives shall sit as observers and assistants to the Court during said calculation of the vote.
Florida	<p>Florida Statutes Title IX §102.071 Conducting elections and ascertaining the results: Tabulation of votes and proclamation of results.—The election board shall post at the polls, for the benefit of the public, the results of the voting for each office or other item on the ballot as the count is completed. Upon completion of all counts in all races, a certificate of the results shall be drawn up by the inspectors and clerk at each precinct upon a form provided by the supervisor of elections which shall contain the name of each person voted for, for each office, and the number of votes cast for each person for such office; and, if any question is submitted, the certificate shall also contain the number of votes cast for and against the question. The certificate shall be signed by the inspectors and clerk and shall be delivered without delay by one of the inspectors, securely sealed, to the supervisor for immediate publication. All the ballot boxes, ballots, ballot stubs, memoranda, and papers of all kinds used in the election shall also be transmitted, after being sealed by the inspectors, to the supervisor's office. Registration books and the poll lists shall not be placed in the ballot boxes but shall be returned to the supervisor.</p> <p>Title IX §102.112 Deadline for submission of county returns to the Department of State. (2) Returns must be filed by 5 p.m. on the 7th day following a primary election and by noon on the 12th day following the general election.</p>
Georgia	§21-2-493As the returns from each precinct are read, computed, and found to be correct or corrected as aforesaid, they shall be recorded on the blanks prepared for the purpose until all the returns from the various precincts which are entitled to be counted shall have been duly recorded; then they shall be added together, announced, and attested by the assistants who made and computed the entries respectively and shall be signed by the superintendent. The consolidated returns shall then be

	certified by the superintendent in the manner required by this chapter. Such returns shall be certified by the superintendent not later than 5:00 P.M. on the seventh day following the date on which such election was held and such returns shall be immediately transmitted to the Secretary of State.
Hawaii	No later than 4:30 p.m. on the last day in the month of the election or as soon as returns received from all counties
Idaho	County-level: §34-1205: The county board of commissioners shall be the county board of canvassers and the county clerk shall serve as their secretary for this purpose. The county board of canvassers shall meet within seven (7) days after the primary election and within ten (10) days after the general election for the purpose of canvassing the election returns of all precincts within the county. County-level: §34-1205: Immediately after the general election canvass, the county clerk shall issue a certificate of election to the county candidates who received the highest number of votes for that particular office and they shall be considered duly elected to assume the duties of the office for the next ensuing term. State-level: On or before the second Wednesday in December next after such election
Illinois	Within 31 days after holding the election
Indiana	County-level: IC 3-12-5-7: Not later than noon on the second Monday following an election, each circuit court clerk shall prepare a certified statement under the clerk's seal of the number of votes received by each candidate for ... federal office. State-level: Upon receipt of the certified statements from the circuit court clerks under section 6 of this chapter and not later than noon of the last Tuesday in November , the election division shall tabulate the number of votes cast for each candidate for ... presidential electors.
Iowa	Precinct-level: §43.46: The precinct election officials shall deliver all election supplies, by noon of the day after the close of the polls, to the commissioner who shall carefully preserve them and deliver the returns in the condition in which received except as is otherwise required by sections 50.20 to 50.22, to the county board of supervisors State-level: At the expiration of 10 days after the completed canvass
Kansas	State-level: Before the first Wednesday in December next after such election
Kentucky	County-level: §117.355: Within thirty (30) days after any primary or general election, the county board of elections shall transmit the information required by KRS 117.274(4) to (7) State-level: State Board shall meet to count when all the returns are in or no later than the third Monday after the election
Louisiana	Parish-level: RS 18:574: The board shall complete the compilation of the election returns and file one copy of the compiled statement with the clerk of court no later than 4:00 p.m. on the fourth day after the election. One copy of the compiled statement shall be postmarked no later than 12:00 noon on the fifth day after the election and mailed to the secretary of state. The clerk of court shall transmit the election returns as shown by the compiled statement from the parish

	<p>board of election supervisors to the secretary of state no later than 12:00 noon on the fifth day after the election. In a parish containing a municipality with a population of three hundred thousand or more, the parish board of election supervisors shall transmit the election returns as shown by their compiled statement to the secretary of state no later than 12:00 noon on the fifth day after the election. Failure to comply with these time limits shall not void the election.</p> <p>State-level: On or before the 12th day after the general election</p>
Maine	<p>Local-level: 21-A §711: The clerk shall record the attested copies of the election return with the Secretary of State within 3 business days after election day.</p> <p>State-level: Within 20 days after the election.</p>
Maryland	Within 35 days of the election
Massachusetts	Within 10 days after they have been transmitted to the Secretary of State
Michigan	<p>County-level: The board shall then proceed without delay to canvass the returns of votes cast for all candidates for offices [...] and shall conclude such canvass at the earliest possible time and in every case within 14 days</p> <p>State-level: On or before the 20th day after the election and no later than the 40th day</p>
Minnesota	<p>County-level: §204C.37 The copy of the canvassing board report and the precinct summary statements must be sent by express mail or delivered to the secretary of state. If the copy is not received by the secretary of state within ten days following the applicable election, the secretary of state shall immediately notify the county auditor, who shall deliver another copy to the secretary of state by special messenger.</p> <p>State-level: On the second Tuesday after each state general election the state canvassing board shall open and canvass the returns</p>
Mississippi	<p>County-level: The commissioners of election shall, with in ten (10) days after the general election, transmit to the Secretary of State, to be filed in his office, a statement of the whole number of votes given in their county and the whole number of votes given in each precinct in their county</p> <p>State-level: Within 30 days after the date of the election</p>
Missouri	<p>Local-level: §115.507.1: Not later than the second Tuesday after each election at which the name of a candidate for nomination or election to the office of president of the United States, United States senator, representative in Congress, governor, lieutenant governor, state senator, state representative, judge of the circuit court, secretary of state, attorney general, state treasurer, or state auditor, or at which an initiative, referendum, constitutional amendment or question of retaining a judge subject to the provisions of article V, section 29* of the state constitution, appears on the ballot in a jurisdiction, the election authority of the jurisdiction shall mail or deliver to the secretary of state the abstract of the votes given in its jurisdiction, by polling place or precinct, for each such office and on each such question.”</p> <p>§115.507.4: “Not later than the second Tuesday after the election, the verification board shall issue a statement announcing the results of each election held within its jurisdiction and shall certify the returns to each political subdivision and special district submitting a candidate or</p>

	question at the election.”The clerks shall, within eight days after they receive the returns, certify and transmit them to the Governor
Montana	<p>Local-level: §13-15-301: Immediately after the returns are canvassed, the election administrator shall file the pollbooks, election records, and papers delivered to the board of canvassers...</p> <p>State-level: §13-15-502: Within 20 days after the election, or sooner if the returns are all received, the state auditor, superintendent of public instruction, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state shall serve as secretary of the board, keep minutes of the meeting of the board, and file them in the official records of his office.</p>
Nebraska	<p>County-level: §32-1034: Immediately upon the completion of the canvass by the county canvassing board, the election commissioner or county clerk shall prepare an abstract of votes for all officers and issues certified to the election commissioner or county clerk by the Secretary of State.”</p> <p>§32-1035: “If the Secretary of State has not received the abstract of votes from any county by the third Monday after the day of election, the Secretary of State may send a messenger to the election commissioner or county clerk of such county at the expense of such county.”</p> <p>State-level: Within 40 days</p>
Nevada	<p>County-level: §293.387.3: The county clerk shall, as soon as the result is declared, enter upon the records of the board an abstract of the result and [...] transmit them to the Secretary of State not more than 7 working days after the election.</p> <p>State-level: Must be completed within 20 days</p>
New Hampshire	<p>§659:73 General Content of Return. The election return forms shall be submitted on paper and electronically immediately after the completion of the vote count in the manner prescribed by the secretary of state. The return of votes shall include, but not be limited to:</p> <p>(a) The name of each candidate printed on the ballot and the number of votes that candidate received for the listed office including any write-in votes for the same office on the same ballot where the voter did not mark the printed candidate name.</p> <p>§659:74 Preparing Return. The town or ward clerk shall prepare the election return in duplicate on the forms supplied by the secretary of state and shall sign and shall certify such returns.</p> <p>§659:75 Forwarding; Retaining Copies of Return. One copy of the election return shall be forwarded by the town or ward clerk to the secretary of state in both paper and electronic form no later than 8:00 a.m. on the day following a state election unless the secretary of state orders them at a different time and date. The other shall be kept by the town or city clerk in accordance with RSA 33-A:3-a and shall be open to public inspection at reasonable times.</p> <p>§659:81 Canvass and Declaration Generally. Except as provided in §RSA 659:82, when the secretary of state has received the returns for an office from all towns or wards comprising the elective district for that</p>

	office, he shall examine, record and total such returns and shall declare elected to the office the same number of persons as the number of officers to which the district is entitled; provided that those persons declared officers-elect shall be those persons who received the highest number of votes cast for said office.
New Jersey	No later than the 28 th day after the election
New Mexico	County-level: §1-13-13: The county canvassing board shall complete the canvass of the returns and declare the results within ten days from the date of the election. State-level: On the third Tuesday after each election, state board will meet to canvass and declare the results of the election
New York	§9-214: The board of elections shall transmit ... a certified copy of the statement of the canvassing board relating to the offices of electors of president and vice president of the United States ... within twenty-five days after the election
North Carolina	County-level: §163-182.5: The county board of elections shall meet at 11:00 A.M. on the tenth day after every election held on the same day as a general election in November of the even-numbered year
North Dakota	Within ten days and before 4 p.m. on the tenth day following any general election
Ohio	Ohio Revised Code, Title 32, §3505.32: "Boards of elections may begin the official canvass of the general election no earlier than the 11th day after the election, and must begin no later than the 15th day after the election. Each board of elections must complete its official canvass and certify no later than the 21st day after the election.
Oklahoma	§26-7-136: The county election board shall use such precinct returns to certify the results of such election for county officers and questions and shall transmit electronically or in writing as prescribed by the Secretary of the State Election Board after 5 p.m. on Friday following the election to the State Election Board the completed county returns for all state officers and questions. ... The State Election Board shall use such county returns to certify the results of such election for all state officers and questions after 5 p.m. on Tuesday next succeeding the election.
Oregon	County-level: §255.295: Not later than the 20th day after the date of an election , the county clerk shall prepare an abstract of the votes and deliver it to the district elections authority State-level: No later than the 30 th day after any election
Pennsylvania	2004 Act 97 §302 (k): No later than the third Monday following the primary or election
Rhode Island	State board shall commence the canvass at 9:00 p.m. on election day and shall continue and complete the tabulation with all reasonable expedition
South Carolina	County-level: §7-17-20The county board of canvassers, respectively, shall then proceed to canvass the votes of the county and make such statements of such votes as the nature of the election shall require no later than noon on the Saturday next following the election and at such time shall transmit to the State Board of Canvassers the results of their findings." State-level: State board shall meet within 10 days after any general election
South Dakota	County-level §12-20-36: Within six calendar days after the close of

	<p>any election, the officer in charge of the election, with the assistance of a majority of the governing board as the canvassing board, shall make the canvass of votes.”</p> <p>State-level §112-20-47 “Within seven days after the day of election, the Board of State Canvassers shall open and examine the returns from each county. However, if the returns from each county have not been received, the board may adjourn, not exceeding ten days, for the purpose of obtaining the returns from each county. The board shall proceed with the canvass after the returns have been received from each county.”</p>
Tennessee	<p>§2-8-101 (a) Meeting of county election commission following election: “The county election commission shall meet at its office upon completion of its duties under §2-8-104, but no later than the third Monday after the election to compare the returns on the tally sheets, to certify the results as shown by the returns in writing signed by at least the majority of them, and to perform the duties prescribed by this chapter.</p>
Texas	<p>§68.032 Delivery of Returns and Voted ballots: The copy of the returns required to be delivered to the county clerk shall be delivered not later than two hours, or as soon thereafter as practicable, after the closing of the polls or after the last person voted, whichever is later. . .</p> <p>§68.034 Transmission of Results to Secretary of State. The county clerk shall transmit periodically, by telephone or other electronic means, to the secretary of state the results for the races being tabulated by the secretary. The results shall be transmitted continuously until complete. (b) The county clerk shall transmit the complete or partial results of the early voting for the appropriate races at 7 p.m. on election day. If only partial results are available, the results shall be transmitted periodically until complete.</p>
Utah	<p>County-level §20A-4-301 (ii)(b): The board of county canvassers shall meet to canvass the returns at the usual place of meeting of the county legislative body, at a date and time determined by the county clerk that is no sooner than seven days after the election and no later than 14 days after the election.</p> <p>State-level: Fourth Monday of November at noon</p>
Vermont	<p>Canvassing committee shall meet at 10:00 A.M. one week after the day of the election</p>
Virginia	<p>Fourth Monday in November, if the Board is unable to ascertain results on that day, the meeting shall stand adjourned for not more than three days</p>
Washington	<p>Not later than 30 days after the election</p>
West Virginia	<p>County-level §3-6-9 “(a) The commissioners of the county commission shall be ex officio a board of canvassers and, as such, shall keep in a well-bound book, marked "election record", a complete record of all their proceedings in ascertaining and declaring the results of every election in their respective counties.</p> <p>(1) They shall convene as the canvassing board at the courthouse on the fifth day (Sundays excepted) after every election held in their county, or in any district of the county, and the officers in whose custody the</p>

	ballots, pollbooks, registration records, tally sheets and certificates have been placed shall lay them before the board for examination.”
Wisconsin	County-level §7.60(5)(a): The county clerk shall deliver or transmit the certified statement to the government accountability board no later than 7 days after each primary except the September primary, no later than 10 days after the September primary and any other election except the general election, and no later than 14 days after the general election . State-level: The first day of December following a general election
Wyoming	County-level §22-16-103 (c)(i): The county canvassing board shall: Meet as soon as all returns have been received and abstracted, but if any provisional ballots have been cast in the county, not before the time has passed for provisional voters to document their eligibility to register or to vote. The board shall meet at a time and place designated by the county clerk, but no later than the first Friday following the election” §22-16-107 “The certified results of the county canvass shall be posted in the office of the county clerk and copies made available to interested persons.”

Federal Statutory Deadlines



Federal law requires completion of the vote tally for President *prior* to the meeting of the Electoral College. Specifically, federal law requires the *delivery* to the presidential electors of six copies of a “Certificate of Ascertainment” containing the official count (the “canvass”) of the number of popular votes cast for each candidate for President prior to their meeting. Indeed, the “Certificate of Ascertainment” containing the official count is the evidence supporting the presidential electors’ right to vote at the meeting of the Electoral College in mid-December.

Section 6 of Title 3 of the United States Code requires:

“It shall be the duty of the executive of each State, as soon as practicable after the conclusion of the appointment of the electors in such State by the final ascertainment, under and in pursuance of the laws of such State providing for such ascertainment, to communicate by registered mail under the seal of the State to the Archivist of the United States **a certificate of such ascertainment** of the electors appointed, setting forth the names of such electors and **the canvass or other ascertainment under the laws of such State of the number of votes given or cast** for each person for whose appointment any and all votes have been given or cast; and it shall also thereupon be the duty of the executive of each State to **deliver to the electors of such State, on or before the day on which they are required by section 7 of this title to meet, six duplicate-originals of the same certificate under the seal of the State**; and if there shall have been any final determination in a State in the manner provided for by law of a controversy or contest concerning the appointment of all or any of the electors of such State, it shall be the duty of the executive of such State, as soon as practicable after such determination, to communicate under the seal of the State to the Archivist of the United States a certificate of such determination in form and manner as the same shall have been made; and the certificate or certificates so received by the Archivist of the United States shall be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection; and the Archivist of the United States at the first meeting of Congress thereafter

shall transmit to the two Houses of Congress copies in full of each and every such certificate so received at the National Archives and Records Administration.
[Emphasis added]

For illustration, Vermont's 2008 Certificate of Ascertainment is shown below:

CERTIFICATE OF ASCERTAINMENT OF ELECTORS FOR PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES		
State of Vermont) Executive Department, ss.)		
Pursuant to the laws of the United States, I, James H. Douglas, Governor of the State of Vermont, certify that the following named persons, residing in the towns indicated, received the number of votes indicated for the offices of ELECTORS OF PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES. These votes were cast at the election held on Tuesday, November 4, 2008.		
For President and Vice-President of the United States	Electors of President and Vice-President of the United States	
Barack Obama and Joe Biden, Democratic	Claire Ayer, Weybridge Euan Bear, Bakersfield Kevin B. Christie, Hartford	219,362
John McCain and Sarah Palin, Republican	Mike Hebert, Vernon Linda Kirker, Georgia Kay Trudell, Grand Isle	98,974
Ralph Nader and Matt Gonzalez, Independent	Sonja Maria Golonka-Seese, Ripton James Marc Leas, South Burlington John Nirenberg, Brattleboro	3,339
Bob Barr and Wayne A. Ross, Libertarian	David A. Baker, Bakersfield Steven J. Howard, Mount Holly Ben Mayer, Burlington	1,067
Chuck Baldwin and Darrell L. Castle, Constitution	John F. Bassene, Hartland Gregory C. Moore, Jr., Leicester Katie E. Smith, Charlotte	500
Roger Cohen and Alyson Kennedy, Socialist Workers	Ralph Irving, Wallingford Peter Voortrees, Middlebury Maja Zimmermann, Middlebury	150
Gloria LaRiva and Eugene Puryear, Socialism and Liberation	Kenneth Brace, Townshend Debra Forrest, Danmoreton Pete Schen, Danmoreton	148
Brian Moore and Stewart Alexander, Liberty Union	Mary Alice Herbert, Putney Doris Lake, Brattleboro Boots Wardinski, Newbury	141
Scattering (write-in) votes:		1,464
I further certify that Claire Ayer, Euan Bear and Kevin B. Christie are the Electors of President and Vice President of the United States for the State of Vermont.		
Witness my hand and the Great Seal of the State of Vermont, hereunto affixed. Done in the Executive Chamber at Montpelier, this 3 rd day of December, 2008.		
		
 James H. Douglas Governor		

Sean Parnell envisions a hypothetical scenario in which the national popular vote count for President might be “unavailable” prior to the meeting of the Electoral College.

“There’s little reason to believe that non-compact states will ... ensure all the votes are counted by the deadline. They may very well decide that it is in their interest to frustrate National Popular Vote, and **not finalize their vote counts until well after their electors have met and voted....**”⁴ [Emphasis added]

Parnell apparently believes that the rogue state official can have his cake and eat it too.

Parnell does not seem to realize that the presidential electors in the rogue state official’s own state cannot cast their votes in the Electoral College until they have been certified by their own state as having been elected to the position of presidential elector. If the vote counts are not certified in the rogue official’s own state, then there would be no presidential electors in the rogue official’s own state. It is the numerical vote count contained in the Certificate of Ascertainment that establishes the presidential electors’ right to vote. It is thus impossible to “finalize [the] vote count until well after their electors have met and voted.” In short, the rogue official’s attempt to “frustrate” the National Popular Vote Compact means disenfranchising the voters of his own state.

Needless to say, voters in the rogue official’s own state (and, in particular, voters who voted for the presidential candidate who would be disadvantaged by the rogue official) would object to being disenfranchised on the whim of the rogue official. A ministerial official does not have the power to negate the votes of every voter in his state by preventing the casting of a state’s electoral votes simply because he wants to “frustrate” the National Popular Vote Compact. These voters in the rogue official’s own state would cite Section 6 of Title 3 of the United States Code requiring the delivery of six copies of the Certificate of Ascertainment to the presidential electors *prior* to the meeting of the Electoral College because it is this certification that enables the presidential electors to take their seats and vote in the Electoral College.

In addition, Sean Parnell both selectively and inaccurately quoted the above federal law (section 6 of Title 3 of the United States Code) in his testimony to the Rhode Island House Judiciary Committee:

“States are not required to count all ballots by the so-called Safe Harbor date, six days before electors meet. Nor are they required to submit their Certificates of Ascertainment by that date. In fact the states are not required to send in their Certificates of Ascertainment until such time as is (I’m taking the word from U.S. Code Title 3, Section 6) “practicable” after the meeting of electors. And they are not due to the Archivist of the United States until 10 days after the electors meet.”⁵

Parnell’s testimony is misleading because he *selectively* focuses only on the *extra seventh copy* of a state’s presidential count that is to be “sent in” to the National Archivist. In fact, no one cares when this seventh copy is “sent in” to the Archivist, much less when the Archivist actually receives it. The important point is that section 6 specifically requires six *original copies* of the

⁴ Hearing on the National Popular Vote bill (Rhode Island bill H5575) at the House Judiciary Committee. Providence, Rhode Island. March 12, 2013.

⁵ Hearing on the National Popular Vote bill (Rhode Island bill H5575) at the House Judiciary Committee. Providence, Rhode Island. March 12, 2013.

Certificate of Ascertainment be *delivered* to the state's presidential electors *prior* to the meeting of the Electoral College.

In addition, Parnell's testimony is misleading because he *deceptively* misquotes the federal statute concerning the irrelevant seventh copy of the Certificate of Ascertainment. The statute does not say that the states are required to send in their Certificates of Ascertainment at "such time as is ... 'practicable' *after the meeting of electors*." Instead, the statute actually says that the Certificates are to be sent in "as soon as practicable *after [the final] determination*" of the presidential count. The "final determination" is an event that typically occurs far more than six days *before* the meeting of electors (on November 28, 2012, in the case of Connecticut). By misquoting the statute, Parnell tries to convey the impression that the critical event is when the irrelevant seventh copy of the Certificate of Ascertainment is dropped in the mail, whereas the critical event is the state's "final determination" of the vote count.

Tools Provided by the National Popular Vote Compact

Sean Parnell seems to think that the states belonging to the National Popular Vote Compact would sit passively by while a rogue state official unilaterally attempted to "frustrate" the casting of their state's electoral votes by failing to finalize the presidential vote from the rogue official's state.

Indeed, the political context for Sean Parnell's hypothetical scenario would be that the rogue state official was attempting to throw the election to the *second-place* presidential candidate after a nationwide presidential campaign had been run, over a period of many months, and in which the candidates and the public all thought that the winner would be the candidate who received the most popular votes in all 50 states (and D.C.).

In fact, the National Popular Vote Compact arms the compacting states with ample tools to guarantee that all of their electoral votes will indeed be cast, and be cast in favor of the presidential candidate who received the most popular votes in all 50 states (and D.C.).

The first clause of Article III of the National Popular Vote Compact provides:

"Prior to the time set by law for the meeting and voting by the presidential electors, the chief election official of each member state shall **determine** the number of votes for each presidential slate in each State of the United States and in the District of Columbia in which votes have been cast in a statewide popular election and shall add such votes together to produce a 'national popular vote total' for each presidential slate." [Emphasis added]

As will be seen below, in normal circumstances the National Popular Vote Compact gives the compacting states no discretion as to how to "determine" the vote count for a particular state, whereas, in other circumstances, the compacting states have a certain amount of discretion.

Compacting States

For compacting states, the process is especially straight-forward. The fourth clause of Article III of the National Popular Vote Compact requires issuance by a compacting state of an "official statement" of the state's "final determination" of its presidential vote prior to the federal "safe harbor" date.

"At least six days before the day fixed by law for the meeting and voting by the presidential electors, each member state shall make a final determination of the number of popular votes cast in the state for each presidential slate and shall

communicate an official statement of such determination within 24 hours to the chief election official of each other member state.”

The above six-day deadline corresponds to the deadline contained in the “safe harbor” provision of federal law (section 5 of Title 3, chapter 1 of the United States Code). The phrase “final determination” in this clause corresponds with the term used in section 5 of federal law.

Thus, the fourth clause of Article III of the compact is a state statutory requirement that each compacting state must comply with the federal “safe harbor” deadline. Although the National Popular Vote Compact does not specify the exact form of the “official statement,” the “official statement” would undoubtedly, in practice, simply be an additional copy of the Certificate of Ascertainment that the state is already required to issue under section 6 of Title 3, chapter 1 of the United States Code.

Non-Compacting States

The process of determining the presidential vote count for non-compacting states would be entirely routine on occasions when the officials of non-compacting states comply with their own state law and comply with sections 5 and 6 of federal law—as, indeed, 100% of the states have done since enactment of the existing federal procedures shortly after the disputed 1876 presidential elections.

If the officials of non-compacting states comply with state and federal law and issue their Certificate of Ascertainment, the fifth clause of Article III of the National Popular Vote Compact gives the compacting states *no discretion* as to how to “determine” the presidential vote count from those states:

“The chief election official of each member state **shall treat as conclusive** an official statement containing the number of popular votes in a state for each presidential slate made by the day established by federal law for making a state’s final determination conclusive as to the counting of electoral votes by Congress.”
[Emphasis added]

In other words, the National Popular Vote Compact gives deference—in the same way as the current system gives deference—to each state’s “final determination” made by the “safe harbor” date (six days before the meeting of the Electoral College).

However, the National Popular Vote Compact does not depend on any particular piece of paper. The officials administering the National Popular Vote Compact in the compacting states have a statutory obligation to ensure that their own state’s electoral votes are cast, and that they are cast in favor of the presidential candidate who received the most popular votes in all 50 states (and D.C.). The “final determination” of a state’s presidential vote does not have to come in the form of the Certificate of Ascertainment. It could just as well be evidenced by, say, the official minutes of the state board of canvassers or any other official document from the state containing the vote count.

As previously mentioned, within a couple of days after Election Day, *official documents* containing the vote tallies of a presidential election exist in at least two separate places in every state, namely

- at the level of local government where the votes were actually counted, and
- at the state office to which the local returns were transmitted.

Thus, if a rogue state official attempted to withhold certification of the statewide vote tally in order to attempt to throw the presidential election to the *second-place* presidential candidate, the officials administering the National Popular Vote Compact in the compacting states would undertake their own good faith effort to “determine” the presidential vote count in the rogue state official’s state.

One option available to officials administering the National Popular Vote Compact in the compacting states would be to acquire the *official* documents containing the local-level vote tallies that are already residing at the state’s designated central location in compliance with state law.

A second option available to officials administering the National Popular Vote Compact in the compacting states would be to acquire the *official* documents from the intermediate level of government that aggregated the election returns from the individual precincts in its area. In most states, this would be the minutes from the country board of canvassers (or equivalent body). In Connecticut, it would be the documents created by the town clerks no later than 21 days after the election (as per §9-322a).

It should be emphasized that the above theoretical options are never going to occur, because federal law alone precludes Sean Parnell’s hypothetical scenario in which a rogue state official attempted to throw the presidential election to the *second-place* presidential candidate by unilaterally trying to withhold his state’s “official” vote tally.

However, as a parlor game, let us consider what would happen under these unlikely scenarios.

The rogue state official would undoubtedly whine that this process was “less official” than usual.

The rogue state official (or, more precisely, allies of the second-place candidate located in the compacting states) would contemplate suing the officials of the compacting states in order to dispute their use of one of the above options. Of course, where there is no harm, there is no foul. A “less official” official vote tally is still official. More importantly, a “less official” official vote tally is only harmful if it is inaccurate in some way—in particular, if it harms a particular presidential candidate. The burden of proof on potential plaintiffs would be to demonstrate either (1) that the officials administering the compact incorrectly added up the numbers found in the official documents or (2) that the official numbers were incorrect. We can safely assume that officials administering the compact know how to add. Thus, anyone contemplating a lawsuit would immediately realize that the necessary evidence of the correct vote tally from the rogue official’s non-compacting state would be the official certification of the vote tally that the rogue official was unilaterally withholding for partisan purposes. To win their lawsuit and stop the official administering the compact from “determining” the vote count under one of the above options, the plaintiffs would need the rogue official to release the official presidential vote count! At that point, the officials administering the National Popular Vote Compact would, of course, use it.

Enhanced Value of Votes Cast in the Rogue Official’s State

The vote cast by a voter in a non-compacting state acquires additional value because of the existence of the National Popular Vote Compact (even though that voter’s state has not adopted the compact). Specifically, a vote cast by a voter in a non-compacting state counts towards the national popular vote total which will determine how the compacting states cast their electoral

votes. Given that the legislature of the rogue state has permitted its voters to vote for President, those voters have an inherent right to have the full value of their vote reflected in the choice of the President—that is, they have a right to have their state’s vote count finalized in a timely manner so that their vote can help determine how the compacting states cast their electoral votes.

Thus, voters of the rogue official’s state could sue to force the rogue official to issue an “official” count for their state. The U.S. Supreme Court has long recognized that a state need not permit its voters to vote for President; however,

“when the state legislature vests the right to vote for President in its people, the right to vote ... is fundamental.”⁶

The 2000 Presidential Election

It should be noted that the nation has historical experience indicating that there is no such thing as rogue state officials who unilaterally attempt to prevent the casting of their own state’s electoral votes for partisan reasons.

It should be noted that the U.S. Constitution does not require that a candidate obtain a majority of the electoral votes (that is, 270 of 538) in order to be elected President. Instead, the 12th Amendment states:

The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors **appointed.**” [Emphasis added]

Thus, if a state fails to appoint its presidential electors, the number of electoral votes required for election is reduced.⁷

In 2000, George W. Bush received 271 electoral votes (counting the 25 that he received from Florida) and Al Gore won 267 electoral votes. A majority of 270 (of 538) was required for election.

In 2000, there were eight states that George W. Bush carried under the current state-by-state winner-take-all system; that had a Democratic Secretary of State; and that had enough electoral votes (five or more) which, if not cast, would have elected Al Gore as President (even after Bush received all 25 of Florida’s electoral votes). Those states were Al Gore’s home state of Tennessee, Bill Clinton’s home state of Arkansas, Georgia, Kentucky, Mississippi, Missouri, North Carolina, and West Virginia.

If Sean Parnell’s hypothetical scenario were legally permissible, it would have occurred in 2000 under the *current* state-by-state winner-take-all system.

⁶ *Bush v. Gore*. 2000. 146 U.S. 1, 35.

⁷ There have been several occasions when a state failed to appoint its presidential electors. For example, New York did not appoint presidential electors in 1789 because the two houses of the legislature could not agree on how to appoint them. Notably, the Southern states did not appoint presidential electors in the 1864 election during the Civil War.

The delayed vote count in New York in 2012 due to Hurricane Sandy

In his testimony to the Rhode Island House Judiciary Committee, Sean Parnell inaccurately described the unique “no harm–no foul” situation that developed in New York state after Hurricane Sandy in 2012.

“In the 2012 election, the state of New York submitted its Certificate of Ascertainment on December 10th, but did not certify its election results until December 31st. In the certified results, President Obama gained more than 300,000 additional votes on top of the total given in the Certificate of Ascertainment. And Governor Romney gained more than 80,000 additional votes. Under our current system, because President Obama had very clearly won the state of New York, the 380,000 votes not included in the Certificate of Ascertainment, did not make a difference. But had NPV been in effect, and the election had been close, such as in 1960 and 2000, the vote counting delay would have been crucial....”⁸

The facts are that, just before Election Day in 2012, Governor Cuomo issued an executive order permitting any voter in the federally-declared disaster area (New York City and suburbs) to cast a provisional ballot at *any* polling place in the state. The result was 400,629 provisional ballots—about four times the state’s usual number of provisional ballots. Under the best circumstances, counting provisional ballots is a time-consuming and labor-intensive task. Normally provisional ballots are cast in the voter’s own precinct (or occasionally in a neighboring precinct). Because these 400,629 voters were scattered around the state, most of these 400,629 paper ballots did not contain the names of candidates for congressional, state legislative, judicial, and local offices appropriate for the voter’s actual home precinct. Thus, it was necessary to make a separate determination, office-by-office, of the voter’s eligibility to vote for each of these 400,629 provisional ballots. For example, if the voter was temporarily living somewhat close to his actual home, he might still be in his own congressional district, but not in his own state legislative district. It was clear on Election Night that 400,629 votes in New York could not possibly affect Obama’s winning New York’s electoral votes (or, for that matter, Obama’s nationwide lead of several million votes).

In this “no harm–no foul” situation (with no aggrieved or affected party), the bipartisan State Board of Elections decided not to divert governmental personnel who were already stretched thin because of urgent hurricane relief to the task of unraveling the complicated situation created by the unexpected 400,629 provisional ballots. Instead, they approved a vote count prior to the meeting of the Electoral College that did not include the 400,629 provisional ballots. A few weeks later, the Board issued a corrected count that included the 400,629 provisional ballots.

Douglas A. Kellner, Co-Chair of the New York State Board of Elections has stated:

“If the final New York count had been required to determine the identity of the President, the New York State Board of Elections would have accelerated its official count—regardless of whether the outcome of the election was being determined by the state-level winner-take-all rule or the national popular vote.”

⁸ Hearing on the National Popular Vote bill (Rhode Island bill H5575) at the House Judiciary Committee. Providence, Rhode Island. March 12, 2013.

In other words, if the 400,629 provisional ballots had been relevant to determining the identity of the President—under either the current system (if New York had been a closely divided “battleground” state) or under the National Popular Vote Compact (if the nationwide vote was closely divided)—the Board would have done the obvious thing and deployed the required number of personnel to promptly count all the votes.

On the other hand, if the National Popular Vote Compact had been in effect in November 2012, the New York State Board of Elections conceivably could have made the same decision that it actually made in the unique situation in 2012, namely to defer counting of the 400,629 provisional ballots (because these ballots would not possibly have affected Obama’s nationwide lead of almost five million votes).

Of course, the current state-by-state winner-take-all system is more susceptible to a result-altering problem created by a hurricane than the national popular vote system. The 2000 presidential election was determined by 537 votes in a hurricane-prone battleground state (Florida). If Hurricane Sandy had hit a closely-divided “battleground” state that was crucial in determining the national outcome under the current state-by-state winner-take-all system (such as North Carolina, Pennsylvania, Virginia, or Florida), state officials would not have had the option of deferring the count of their provisional ballots.

Please call me if you have any questions or would like to discuss this matter further.

Yours truly,

A handwritten signature in black ink that reads "John Koza". The signature is written in a cursive, flowing style.

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